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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised
Percentages of Depreciation
pursuant to the Communications
Act of 1934, as amended for:

Alascom, Inc. AAD 91-18
Continental Telephone
Company of Virginia
GTE North Incorporated
GTE South Incorporated
GTE Southwest Incorporated
New England Telephone
and Telegraph Company
Ohio Bell Telephone Company
Pacific Northwest
Bell Telephone Company
South Central Bell
Telephone Company
Southern New England
Telephone Company
The Chesapeake and
Potomac Telephone
Company of Virginia
The Chesapeake and
Potomac Telephone
Company of West Virginia
United Inter-Mountain
Telephone Company

and

Policy Regarding Effective Date
of Depreciation Prescriptions

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: January 28, 1992; Released: January 31, 1992

By the Commission:

I. INTRODUCTION

1. In the 1990 Depreciation Rates Prescription Order,[1] released January 31, 1991, this Commission adopted January 1 of the study year as the mandatory effective booking date for new depreciation rates, effective for carriers studied in the 1991 represcription and thereafter. Petitioners[2] request that we reconsider our decision and return to our transitional policy, in effect from 1981-1990, of allowing carriers to select any date within the study year or January 1 of the following year as the effective date for new depreciation rates. Five parties commented on the petitions for reconsideration, and five parties replied.[3] We deny the petitions for reconsideration for the reasons discussed below with an exception made for rate of return carriers studied in the upcoming 1991 represcription.

II. BACKGROUND

2. Each year we prescribe new depreciation rates for approximately one third of the major domestic telecommunications carriers, based on studies made as of the beginning of the year. Prior to 1981, it was common practice for carriers to request, and for the Commission to prescribe, January 1 of the study year as the effective date for revised depreciation rates. The Commission followed this practice in order to assure that depreciation expense reported for the study year was based on the latest estimate of that expense.

3. In 1981, with the initial implementation of the remaining-life (RL) and straight-line equal life group (SLELG) depreciation methods,[4] many carriers requested effective dates later than January 1 of the study year. Carriers requested later effective dates because implementation of the new methods resulted in unusually large increases in depreciation expense: carriers feared that state commissions that had resisted the new methods would not approve of rate increases until the Commission actually prescribed depreciation rates using the new methods. In response to these requests, the Commission determined that during the transition period to the new depreciation methods, carriers could select effective dates for new depreciation rates between January 1 of the study year and January 1 of the following year.[5]

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[1] The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for: Alascom, Inc. *et. al.*, 6 FCC Rcd 750 (1991) (*1990 Depreciation Rates Order*).

[2] Petitions for Reconsideration were filed by the Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (SWBT), the United States Telephone Association (USTA), the Cincinnati Bell Telephone Company (CBT), and GTE Service Corporation (GTE).

[3] The parties that filed comments are the Public Service Commission of the State of New York (NYDPS), the Virginia State Corporation Commission (VSCC), the Minnesota Department of Public Service (MDPS), The Bell Atlantic Telephone Companies (Bell Atlantic), and The Ameritech Operating Companies (Ameritech). Reply comments were filed by the National Association of Regulatory Utility Commissioners (NARUC), GTE, CBT, SWBT, and MCI Telecommunications Corporation (MCI).

[4] Amendment of Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies), 83 FCC 2d 267 (1980) (*Property Depreciation*), *recon.*, 87 FCC 2d 916 (1981), *Supplemental Opinion and Order*, 87 FCC 2d 1112 (1981).

[5] The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for: AT&T *et. al.*, 88 FCC 2d 1223 (1982).

4. On August 17, 1990, the Bureau invited comments on whether the Commission should continue to adopt the effective dates proposed by the carriers.[6] In our *1990 Depreciation Rates Order*,[7] we ruled that beginning with the 1991 represcription period, depreciation prescriptions would be effective January 1 of the study year. We found that flexibility was no longer warranted because the transition to the new depreciation methods had been completed; because states were no longer bound by the effective dates or depreciation rates prescribed by the Commission; and because the endogenous treatment of depreciation rate changes under price cap regulation had broken the direct link between changes in depreciation expense and changes in revenue.

5. Petitioners argue (1) that mandatory retroactive booking of depreciation rates is inconsistent with the "endogenous" treatment of depreciation rates under price cap regulation; (2) that accounting principles do not support a mandatory retroactive booking date; and (3) that the flexibility to match effective dates for new depreciation rates with the implementation of tariffs based on those rates is necessary to assure that rate of return carriers achieve full capital recovery. Accordingly, petitioners urge us to reconsider our decision adopting January 1 of the study year as the effective date for depreciation rate represcriptions.

III. ISSUE ANALYSIS

A. Price Cap Regulation

6. In the price caps proceeding, this Commission found that depreciation rate changes should be endogenous because carriers control their depreciation costs through their decisions to deploy and retire equipment.[8] Petitioners argue that, by denying carriers the right to choose an effective date, this Commission in effect is denying carriers such control. According to petitioners, our decision in the *1990 Depreciation Rates Order* undermines our rationale for endogenous treatment of depreciation rate changes under price cap regulation.[9]

7. NARUC objects to petitioners' claim that retroactive booking of depreciation rates is inconsistent with the "endogenous" treatment of depreciation rates under price cap regulation because "[a]lthough it may be a policy decision to rule that depreciation expenses are endogenous, it is mathematical, technical, and theoretical logic that requires booking coincident with the study date."[10] NYDPS states that "the type of regulation should have no bearing on the treatment of depreciation."[11]

8. A mandatory January 1 of the study year effective date for depreciation rate prescriptions is not inconsistent with the endogenous treatment of depreciation rate changes under price cap regulation. Rather, these two policies serve two distinct regulatory purposes. The purpose of the mandatory effective date is to assure that a carrier's books of account for a given year reflect as accurately as possible the depreciation expenses incurred during the year,[12] which in turn helps assure that the carrier's financial reports will accurately portray its financial condition. The purpose of endogenous treatment of depreciation rate changes is to preserve the incentives we created with the price cap program by requiring carriers to live with the depreciation rates that result from their investment decisions.[13] The flexibility that carriers possessed under our former depreciation accounting policy was not a factor in our determination in the price caps proceeding that carriers exercise a degree of control over their depreciation rates. That determination was based on the carriers' control over the capital investment and retirement decisions that form the basis of depreciation rates. Likewise, our elimination of their control over effective dates does not diminish their control over those business decisions.

9. Removal of carrier discretion over the booking of depreciation rate changes will promote the orderly operation of the price caps sharing mechanism. Under the LEC price caps plan, a LEC must share with ratepayers a portion of its earnings above a certain level. While this sharing mechanism provides a desirable "backstop" against the possibility that our price cap formula would produce unreasonable rates, it also creates an undesirable incentive for carriers to shift costs from one year to the next. Depreciation is the largest single operating expense for carriers, and changes in depreciation rates can have a significant bearing on the level of reported interstate earnings.[14] Fixing the effective date eliminates this costshifting incentive.

10. SWBT states that endogenous treatment of depreciation rate changes under price caps increases the risk of rate recovery for depreciation rate changes because a price cap LEC is not assured that the price cap mechanism will allow it to recover any increase in depreciation expense. According to SWBT, a retroactive booking date compounds this risk.[15] SWBT also claims that enforcing a

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[6] Comments Invited on Depreciation Rate Prescriptions Proposed for Domestic Telephone Carriers and on Commission Policy for Effective Date of Depreciation Prescriptions, 5 FCC Rcd 5257 (1990).

[7] *Supra* note 1.

[8] Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, 6809, para. 182 (1990) (*LEC Price Cap Order*); *recon.*, 6 FCC Rcd 2637, 2672, para. 74 (1991) (*LEC Price Caps Recon. Order*). "Endogenous" cost changes cannot be flowed through to the price cap index (PCI) but must be absorbed by the carrier. Under our price cap plan, most costs are considered endogenous. A few types of cost changes that are triggered by administrative, legislative, or judicial actions beyond the carriers' control are considered "exogenous"; changes in exogenous costs result in adjustments to the PCI.

[9] USTA Petition at 2; SNET Petition at 3; SWBT Petition at 5-6; GTE Petition at 2-4, 6; Bell Atlantic Comments at 2-3; Ameritech Comments at 5; GTE Reply at 5-6; USTA Reply at 2. *See also* GTE Petition at 7 (because prices rather than costs are regulated under price cap regulation, detailed regulation of depreciation is "not only unnecessary but pointless.")

[10] NARUC Reply at 6.

[11] NYDPS Comments at 2.

[12] *See* Section III.B. below.

[13] *LEC Price Cap Order*, 5 FCC Rcd at 6809, para. 183.

[14] In 1990, for instance, depreciation expense amounted to 22% of total operating expenses of the local exchange carriers and American Telephone and Telegraph Co. *See* The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for AT&T Communications *et. al.*, para. 2, FCC 92-38 (adopted January 28, 1992).

[15] SWBT Petition at 7. SWBT argues that depreciation rate changes should be exogenous. We considered and rejected this

retroactive application of depreciation rate changes impairs a LEC's ability to forecast costs, and "since costs must be a key consideration in pricing decisions, the LEC's ability to make appropriate pricing decisions is also impaired."[16] Ameritech contends that uncertainty with regard to the amount of depreciation change that may be imposed on a retroactive basis will make it difficult for a LEC to elect an appropriate productivity factor under the price cap plan.[17] SWBT argues that depreciation rates cannot be known with any degree of certainty and carriers are unable to reasonably estimate changes in depreciation expense until we issue our final represcription order.[18] SWBT also argues that because depreciation is its only source of internally generated funds for infrastructure development, uncertainty about the amount of depreciation that will be booked will force the company to take a conservative approach to capital deployment, thus handcuffing incentives for infrastructure development.[19]

11. According to VSCC and NYDPS, SWBT's claim that the risk of rate recovery for depreciation changes increases under price cap regulation "has no quantitative credibility".[20] According to VSCC, price cap regulation affords companies greater earnings flexibility than traditional rate of return regulation and with flexibility comes risk. VSCC argues that a company should not be guaranteed recovery of an expense while it is concurrently being given more earnings and pricing flexibility under incentive-based price cap regulation. In addition, VSCC disputes SWBT's claim that depreciation expense is an unknown expense: "[i]t is a safe assumption to say that any telephone utility knows well in advance and within a very narrow margin the depreciation expense it will incur in any given year, including years in which it has "rates prescribed."[21]

12. Under price cap regulation, it is up to the carriers to manage their own costs and to set prices within the zones of flexibility we created in order to generate reasonable returns. In recognition of the increased risk they bear, carriers are allowed to retain more earnings under price caps than they would under rate of return regulation.[22] Ameritech's and SWBT's claims that their inability to forecast changes in depreciation rates impairs their ability to make pricing decisions or to elect the appropriate productivity offset in the price cap index, are not persuasive. When carriers make decisions about pricing, or decide which productivity offset to elect, they cannot know to a certainty how any of their costs will change during the upcoming year. Like all businesses facing pricing decisions, they must make internal predictions about how they believe their costs will change. Our depreciation rate prescriptions are in fact more predictable than most kinds of costs, because our rates are based on established formulas which, in turn, are based on factors determined by the carriers' own investment decisions.

13. We do not agree with SWBT that depreciation is its only source of internally generated funds for infrastructure development, nor do we agree that our decision fixing the effective date for depreciation rates creates uncertainties about the amount of internally generated funds that will be available for investment. Net income is also an important source of internally generated funds. Moreover, net income and depreciation expense are inversely related: if a carrier's depreciation expense is higher due to an earlier effective date, its net income is lower. Thus, a carrier's internally generated funds from operations are unaffected by the effective date of depreciation rate changes. The total of net income plus depreciation expense would be the same regardless of which effective date is used for new depreciation rates. Thus, fixing the effective date does not introduce uncertainty about the amount of internally generated funds. In any case, we believe that our price cap plan contains sufficient incentives to encourage LECs to develop their infrastructure in ways that improve productivity and efficiency over the long-run.[23]

B. GAAP

14. In the *1990 Depreciation Rates Order*, we affirmed our historically-held view that sound accounting calls for immediate recognition of new depreciation rate estimates, and that January 1 of the study year is therefore the preferred effective date for accounting purposes.

15. Petitioners contend that a mandatory January 1 effective date fails to comply with generally accepted accounting principles (GAAP). SWBT and SNET argue that the GAAP rule which prohibits accounting for a change in estimate by restating amounts reported in prior period financial statements applies to depreciation expense, because estimates are used to determine the asset's useful life and salvage value. Accordingly, a change in depreciation "should be prospectively accounted for in the period of change and in future periods if the change affects both."[24] According to SNET, the "period of change", for purposes of this GAAP rule, is the quarter in which the change occurs. SNET bases this interpretation on the fact that it files quarterly financial reports with the Securities and Exchange Commission.

16. VSCC, NARUC, NYDPS, and MCI challenge petitioners' claim that a mandatory January 1 of the study year booking date conflicts with GAAP. VSCC claims that the "period of change" for purposes of changes in depreciation expense estimates is annual, not quarterly. According to VSCC, a quarterly statement is, by definition, an interim statement; the intent of APB Opinion No. 20 was to prohibit restatement of prior *years'* accounting statements.[25] VSCC and NARUC submit that booking a remaining-life or equal life group rate at any time other than the study date results in the booking of an inac-

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argument in *LEC Price Cap Order*, 5 FCC Rcd at 6809, para 182-187; *LEC Price Caps Recon. Order*, 6 FCC Rcd at 2671-2, para. 73-75.

[16] SWBT Petition at 7.

[17] Ameritech Comments at 6; SWBT Petition at 7.

[18] SWBT Petition at 2.

[19] *Id.* at 4, 6, 8-9; USTA Petition at 3; Ameritech Comments at 6; GTE Reply at 4. *See also*, GTE Petition at 7-8.

[20] VSCC Comments at 5; NARUC Reply at 5.

[21] VSCC Comments at 4. *See also*, VSCC Comments at 3 ("|o|ne of the few things that is not speculative... is the reserve ratio used in calculating a RL or ELG rate....|D|epreciation is one of the more predictable expenses.")

[22] *LEC Price Cap Order*, 5 FCC Rcd at 6787, para. 2-3.

[23] *Id.*, 5 FCC Rcd at 6809, 6829, paras. 183, 351.

[24] SWBT Petition at 3 (referring to Accounting Principle Board Opinion (APB) No. 20, " Accounting Changes," para. 31); SNET Petition at 5-6; CBT Petiti on at 8-9.

[25] VSCC Comments at 6.

curate rate.[26] According to NYDPS, our policy appropriately treats depreciation as any other current expense would be treated on a telephone company's books: depreciation is recorded at the cost actually incurred, when incurred. Once the proper revised depreciation rate is known, it is inappropriate to continue to book an outdated level of expense.[27] Therefore, knowingly booking an incorrect depreciation rate, which occurs when a date other than January 1 is chosen, is inconsistent with standard accounting principles and encourages carriers to manipulate their financial statements.[28]

17. We agree with VSCC and NARUC that booking a remaining-life and equal life group rate at any time other than the study date results in the booking of an inaccurate rate.[29] Furthermore, we agree with VSCC that the "period of change" referenced in APB Opinion No. 20 is annual, not quarterly. "Historically, generally accepted accounting principles have been established in the context of the annual period."[30] Depreciation expense, like pension expense and amortization, is recognized on the basis of ongoing estimates. These estimates vary based on experience and are booked in the current period, *i.e.*, the current year, based on the best information available. If a better estimate of the level of expense becomes available during the year, as it does when the Commission prescribes a new depreciation rate, then accounting entries for the year must be revised to reflect the new estimate. Otherwise, annual financial reports will not reflect the company's true financial condition. Carriers refer to this as "retroactive" booking, but, from an accounting perspective, revisions in expenses for any month of a year are not "retroactive" as long as they are made before the company closes its books for the year. Anything less than one year is deemed an "interim period". Investors and others who rely on company financial statements are aware that quarterly reports are interim in nature, and that the picture presented by quarterly reports may differ from what ultimately appears in the annual report. Our rule focuses on preserving the integrity of the annual financial results reported by the carriers under our jurisdiction.

C. Coordination of Depreciation Rate Changes with Federal Tariff Changes; Capital Recovery.

18. In the *1990 Depreciation Rates Order*, we found that because depreciation rate increases are treated as endogenous, "the direct link between changes in depreciation expense and changes in revenue is broken. Any concern about the coordination of depreciation rate changes based on those rates, at least with respect to federal tariffs, is no longer a factor for consideration for most of the carriers."[31] Petitioners and their supporters, however, urge us to reinstate the Commission's transitional policy permitting carriers flexibility to match the effective date for depreciation rates with the effective date of new federal tariffs.[32] According to SNET, CBT, and USTA, this "direct link" remains for rate of return carriers who still need to coordinate the effective dates of depreciation rates with the effective dates of new federal tariffs.[33] CBT argues that if the Commission has the ability to dictate depreciation expenses retroactively to a time period before changes in current depreciation expenses are incorporated into tariffed rates, insufficient revenues may be generated. Therefore, according to CBT and SNET, a carrier's ability to manage and control its budget and capital recovery is limited by our decision and confiscation may result.[34]

19. NYDPS, MDPS, VSCC, and NARUC disagree with petitioners' claim that flexibility is needed in order to match depreciation rate changes with their annual access tariff filings.[35] In particular, VSCC and NARUC argue that of the two dates in question (depreciation rate effective date and tariff effective date), only the tariff date should be discretionary. According to the state commissions, there should be no discretion in effecting a remaining-life or SLELG depreciation rate because booking at any date other than the study date yields an inaccurate rate. Therefore, the fact that a carrier is required to book depreciation expense before such changes can be incorporated into tariffed rates "may be a problem, but is *not* a depreciation problem."[36]

20. With respect to price cap carriers, we affirm our previous decision that the direct link between changes in "depreciation expense and changes in revenue is broken. The endogenous treatment of depreciation expense under price cap regulation obviates a price cap carrier's need to coordinate changes in depreciation expense with federal access tariffs.

21. We find that rate of return carriers for whom we prescribe depreciation rates may still legitimately claim a need to match depreciation rate changes as closely as possible with tariff rate changes.[37] In recent years, annual access tariffs have been due in April, and rates have been in effect from July 1 of one year to June 30 of the following year. Thus, during the first half of a study year, existing tariff rates may reflect depreciation estimates that predate the depreciation study filed at the beginning of

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[26] VSCC Comments at 1-2; NARUC Reply at 4; MCI Reply at 2.

[27] NYDPS Comments at 1.

[28] NARUC Reply at 4, 6; MCI Reply at 2; VSCC Comments at 7.

[29] Both SWBT and Ameritech quote the Commission's 1981 statement that flexibility strikes a proper balance between the requirements of proper accounting (which argues for immediate imposition of new rates) and the realities of the regulatory process. SWBT Reply at 4; Ameritech Comments at 2. *See also, Property Depreciation*, 83 FCC 2d 267 (1980). As far back as 1981, therefore, the Commission has found that proper accounting calls for the immediate imposition of new rates. As we have stated, because regulatory conditions have changed since 1981, the balance has changed in favor of proper accounting. *See 1990 Depreciation Rates Order*, 6 FCC Rcd at 754, para. 29.

[30] J. Williams, K. Stanga & W. Holder, *Intermediate Accounting* 1271 (2d ed. 1987). *See also, Accountant's Handbook* 4 (L. Seidler 2d ed. 1981).

[31] *1990 Depreciation Rates Order*, 6 FCC Rcd at 753, para. 23.

[32] USTA Petition at 3; SNET Petition at 4; CBT Petition at 4-5, 6-7; USTA Reply at 1-2.

[33] SNET Petition at 3-4; CBT Petition at 5, 8; USTA Petition at 2-3; USTA Reply at 1-2; CBT Reply at 3.

[34] CBT Petition at 8; SNET Petition at 4-5. *See also*, GTE Petition at 4; GTE Reply at 7.

[35] NYDPS Comments at 2; MDPS Comments at 1-2; VSCC Comments at 3; NARUC Comments at 5.

[36] VSCC Comments at 3 (emphasis in original); NARUC Comments at 5.

[37] Currently, there are only two rate of return carriers for whom the Commission prescribes depreciation rates, Citizens Utilities of California and CBT. Both companies are up for represcription this year.

that year. Our policy permitting carriers to file a mid-course correction as soon as their three-way meeting has concluded allows a carrier for whom the staff is proposing a depreciation increase to begin charging rates based on that increase well before the end of the study year. However, there still exists an interval between January 1 of the study year and the three-way meeting during which rate of return carriers may not be able to include in rates depreciation expense that will ultimately be booked during those months. In order to alleviate this situation in the future, we direct our staff to schedule three-way meetings for rate of return carriers very early in the study year. In this way, they may file early mid-course corrections if they find that their depreciation expense is higher than the rate filed with their access tariff.

22. We acknowledge, however, that rate of return carriers studied in the 1991 represcription may be disadvantaged by our failure to have scheduled their three-way meetings early in the study year.[38] Because the three-way meeting schedule was set prior to the release of our *1990 Depreciation Rates Order* wherein we first ordered the new policy, we were unable to schedule three-way meetings for these carriers earlier in the study year. CBT requested that, if we do not reinstitute our former policy, we delay implementing our new policy until the 1992 triennial represcription proceeding. We will grant this request, but only for rate of return carriers. For the 1991 triennial represcription only, rate of return carriers will not be required to apply the mandatory January 1 of the study year effective date and instead may apply the effective date requested in their formal filings with the Secretary. Thereafter price cap carriers and rate of return carriers will be handled the same with respect to our effective date policy.

D. Flexibility with Regard to Controversy Among the States.

23. According to SWBT, we are correct in recognizing that, in 1981, the Commission permitted carriers flexibility because there was controversy among the states concerning the new depreciation methods. SWBT, however, claims that instead of diminishing, this controversy has increased over the last ten years because a number of states use rates other than those authorized by us to record intrastate depreciation expense.[39]

24. MDPS argues that LECs do not need the flexibility to match the implementation of new depreciation rates with the results of state rate cases. Both the Virginia and Minnesota commissions also order that depreciation rates be effective January 1 of the study year. VSCC maintains that no utility has requested that it change to a more flexible policy.[40]

25. In 1981, our depreciation rate prescriptions had preemptive effect and thus controlled the amount of depreciation expense that would be allowed in state rate cases. Therefore, carriers could assure that depreciation increases would be reflected in intrastate tariff rates by matching the effective date of the depreciation rate to the state tariffing process. Now, however, as SWBT points out, states are under no obligation to use our prescribed depreciation rates for ratemaking purposes. Therefore, state ratemaking considerations no longer provide a reason to retain our previous flexible policies.

E. Alternative Proposals

26. Were we to decide not to reinstate the Commission's previous policy allowing carriers flexibility in booking new depreciation rates, SNET, VSCC and NARUC recommend a possible alternative. This alternative would require that the effective date coincide with the study date but would allow carriers to choose their study date.[41] CBT suggests that we allow carriers to submit their study one year prior to the study date using estimated data in order to complete the review process before the effective date.[42]

27. We reject SNET, VSCC and NARUC's suggestion that carriers be permitted to choose their study dates. First, the accounting principles discussed above would require application of the latest estimate for the entire year (*i.e.*, on January 1 of the study year) regardless of the study date. Second, the Commission must prescribe depreciation rates for approximately 13 carriers each year. To do this with the limited resources at our disposal requires careful advance planning by our staff, including extensive coordination with state commission staffs to set each year's schedule of three-way meetings. It would be administratively infeasible to accommodate varying study dates for different carriers.[43] We reject CBT's request because submitting estimated data would inject unneeded controversy into the depreciation process over the accuracy of the carriers' projected data.

IV. CONCLUSION

28. We have reviewed the petitions for reconsideration and the comments thereon. We do not find persuasive petitioners' argument that we should reinstitute the Commission's transitional policy permitting carriers flexibility in choosing effective dates for depreciation rate changes. A mandatory January 1 of the study year effective date is compatible with price cap regulation and ensures that depreciation rate changes are accurately booked. We find that, in general, the needs of rate of return carriers can be addressed through early scheduling of their three-way meetings. Finally, we find that, as a limited exception,

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[38] In the 1991 represcription, we will prescribe rates for two rate of return carriers, Citizens Utilities Company of California and CBT. Citizens Utilities requested an effective date of January 1, 1991. *See* Letter from Arthur J. Stimson, Vice President and General Manager to Donna R. Searcy, Secretary, Federal Communications Commission, dated July 16, 1991. CBT requested a July 1, 1991 effective date. *See* Letter from Robert Sigmon, Vice President -- Regulatory Affairs to Donna R. Searcy, Secretary, Federal Communications Commission, dated July 8, 1991. Since filing its petition for reconsideration, SNET has elected to become a price cap carrier.

[39] SWBT Petition at 8. *See also*, Ameritech Comments at 5.

[40] VSCC Comments at 2; MDPS Comments at 1.

[41] SNET Petition at 6; VSCC Comments at 7; NARUC Petition at 7; CBT Reply at 4.

[42] CBT Petition at 2, 9; CBT Reply at 4. GTE also suggests that rather than change the price cap rule or our decision with respect to effective dates, we should attempt to reform governmental depreciation policies "so the process is not outside the carrier's control." GTE Petition at 6-8; GTE Reply at 3. We reject this suggestion since GTE has not described how this reform should be implemented and, furthermore, reformation of the depreciation process is beyond the scope of this proceeding.

[43] *Accord*, MCI Reply at 3.

rate of return carriers studied in the 1991 represcription should be allowed to apply the effective date they requested when filing their formal depreciation estimates with the Secretary. Accordingly, we affirm our decision to the extent indicated herein.

V. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 220(b), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 220(b), and 405, that the Petitions for Reconsideration of our Policy Regarding the Effective Date of Depreciation Prescriptions ARE DENIED to the extent indicated herein.

30. IT IS FURTHER ORDERED, pursuant to Section 43.43(e) of the Commission's rules, 47 C.F.R. § 43.43(e), that rate of return carriers submitting depreciation studies for review during the 1991 represcription only, may use an effective date requested in their formal filings with the Secretary.

31. IT IS FURTHER ORDERED, pursuant to Section 43.43(e) of the Commission's rules, 47 C.F.R. § 43.43(e), that the effective date for all other carriers submitting depreciation studies for review during the 1991 represcription and thereafter will be January 1 of the study year.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 92-13

In the Matter of

Tariff Filing Requirements for
Interstate Common Carriers

NOTICE OF PROPOSED RULEMAKING

Adopted: January 24, 1992; Released: January 28, 1992

Comment Date: March 30, 1992
Reply Date: April 29, 1992

By the Commission:

I. INTRODUCTION

1. On August 7, 1989, AT&T Communications filed a complaint against MCI Telecommunications Corporation alleging that MCI is violating section 203 of the Communications Act of 1934 (the Act) by providing interstate common carrier telecommunications services to certain large business customers at rates and on terms and conditions not set forth in MCI's interstate tariffs. AT&T's complaint did not allege that MCI is violating Commission rules but, in essence, that certain Commission rules are unlawful. In particular, AT&T calls into question the Commission's longstanding forbearance rule, under which the Commission forbears from requiring nondominant interexchange carriers (IXCs) from filing interstate tariffs.

2. In a companion order adopted today, we deny AT&T's complaint in part and dismiss it in part, on the grounds that: (1) MCI should not be liable to AT&T for actions that were fully consistent with Commission rules; and (2) reconsideration of a fundamental rule, such as forbearance, which represents one of the cornerstones of the Commission's regulatory framework for the long-distance industry, should not occur in the context of an adjudication between two parties.[1] Because the issues raised in AT&T's complaint are serious and important ones, however, we issue this Notice of Proposed Rulemaking to review the lawfulness and future application of our forbearance rules and policies.

II. BACKGROUND

3. In 1979, the Commission initiated the *Competitive Carrier* rulemaking proceeding in order to consider amendment of the tariff filing requirements for competitive common carriers, as well as other rule changes relating to facilities and service authorizations.[2] In the *Second Report and Order* in that proceeding, adopted in 1982, the Commission concluded that the Commission had authority under the Act to forbear from requiring nondominant IXCs to file interstate tariffs, and it adopted uncodified forbearance rules for certain resellers.[3] One year later, in the *Fourth Report and Order*, the Commission extended forbearance to all nondominant IXCs.[4] Today there are in excess of four hundred nondominant IXCs that offer common carrier services.[5] Few, if any, of these carriers file tariffs for all of their service offerings, and most do not file any tariffs at all.

4. In concluding that forbearance rules for nondominant IXCs would be desirable and lawful, the Commission found that application of traditional section 203 tariff filing requirements to nondominant IXCs was both unnecessary and harmful. The Commission found these requirements to be unnecessary because nondominant IXCs, lacking market power, could not rationally charge rates, or engage in practices, that contravened the requirements of the Act.[6] The Commission found tariff filing IXCs to be harmful on the grounds that such requirements inhibit price competition, service innovation, and the ability of firms to respond quickly to market trends.[7] The Commission concluded that the Act does not require the Commission to use all Title II regulatory tools for all common carriers, and that if application of a particular regulatory regime to a particular class of carriers would frustrate the overriding goals of the Act, the Commission could and should forbear from applying that regime to that class of carriers.[8]

5. In the *Sixth Report and Order* in the *Competitive Carrier* proceeding, the Commission expanded upon the forbearance rules to *preclude* nondominant IXCs from filing any tariffs.[9] This decision was appealed by MCI and reversed in 1985 by the United States Court of Appeals for the District of Columbia Circuit.[10] In ruling that the Commission lacked authority to prohibit nondominant

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[1] *See* AT&T v. MCI, E-89-297, FCC 92-36, adopted January 24, 1992.

[2] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979).

[3] 91 FCC 2d at 65. At that time, only terrestrial resellers and specialized common carriers were classified as nondominant. The Second Report and Order applied the forbearance rules only to terrestrial resellers.

[4] 95 FCC 2d 554 (1983). The Commission also expanded the class of nondominant IXCs to include miscellaneous common carriers, domestic satellite carriers (domsats), domsat resellers, domestic operations of Western Union, international record carriers, other record carriers, and IXCs affiliated with exchange telephone companies. *Id.* at 557.

[5] Summary of Long Distance Carriers, Industry Analysis Division, FCC, November 22, 1991, Table 1.

[6] Second Report and Order, 91 FCC 2d at 69.

[7] *Id.* at 65.

[8] The Commission stated: "It is now well recognized that 'Congress could neither foresee nor easily comprehend the fast-moving developments in the field.' Therefore, this agency has been granted' substantial discretion in determining both what and how it can properly regulate, ' so long as it is exercised in a manner that effectuates rather than frustrates the overriding statutory goals." 91 FCC 2d at 65-66 (citations omitted).

[9] 99 FCC 2d 1020 (1985).

[10] MCI Telecommunications Corp. v. FCC, 765 F.2d 1191 (D.C. Cir. 1985).

IXCs from filing tariffs, however, the Court expressly declined to address the lawfulness of permissive forbearance.[11]

6. In 1990, subsequent to the Commission's *Competitive Carrier* decisions, the Supreme Court addressed the "filed rate" requirement of the Interstate Commerce Act. The Court said that the requirement in the Interstate Commerce Act that common carriers offer service only pursuant to filed rates was "utterly central" to the administration of that Act and could not be modified by the Interstate Commerce Commission.[12] The Court stated that "[w]ithout [these provisions]...it would be monumentally difficult to enforce the requirement that rates be reasonable and nondiscriminatory, ... and virtually impossible for the public to assert its right to challenge the lawfulness of existing proposed rates."[13] The Court stated further that "[a]lthough the [Interstate Commerce] Commission has both the authority and expertise generally to adopt new policies when faced with new developments in the industry, it does not have the power to adopt a policy that directly conflicts with its governing statute."[14]

7. Later that same year, however, Congress appears to have recognized the operation of our forbearance rule when it enacted the Telephone Operator Services Consumer Improvement Act of 1990.[15] That Act requires operator service providers (which are common carriers) to file certain "informational tariffs" and to update them periodically. These informational tariff filing requirements are more lenient than the tariffing requirements of section 203 of the Act. In addition, Congress authorized the Commission to discontinue the informational tariff filing requirements after four years in the event the Commission finds these requirements no longer to be necessary.

III. DISCUSSION

8. In light of the occurrences described above and AT&T's complaint against MCI, we believe it appropriate to initiate a rulemaking proceeding to address the lawfulness of our forbearance policy. In addition, we will consider alternatives to this policy and how such alternatives might be implemented. Accordingly, we seek comment on the following issues:

(a) Does the Commission have authority under sections 4(i) and 203 or other provisions of the Communications Act to continue to permit nondominant carriers not to file tariffs?

(b) If the Commission's current forbearance rule is unlawful, does it necessarily follow that *all* common carriers must file tariffs? If not, for what classes of carriers is forbearance permissible and for what classes is it impermissible?

(c) If the Commission's current forbearance rule is unlawful, should carriers be required to file any or all of their off-tariff service arrangements that are currently in effect? If so, in what time frame?

(d) If the Commission's current forbearance rule is unlawful, would any other Commission rules need to be changed, and if so, how should they be changed? If forbearance is found to be unlawful, should the streamlining rules in *Competitive Carrier* be relaxed to allow for additional streamlining for carriers currently subject to forbearance? If so, what sort of additional streamlining might be appropriate? What would be the implications of any proposed changes in Commission tariffing policies for small IXCs, users, and other affected entities? What would be the implications for competition in the marketplace?

IV. PROCEDURAL MATTERS

A. Ex Parte Rules -- Non-restricted Proceeding

9. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.

B. Regulatory Flexibility Act

10. An Initial Regulatory Flexibility Analysis is contained in Appendix A.

C. Authority

11. Authority for this rulemaking action is contained in 47 U.S.C. §§ 154, and 201-205.

V. ORDERING CLAUSES

12. IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

13. IT IS FURTHER ORDERED THAT pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules,[16] comments SHALL BE FILED on or before March 30, 1992, and reply comments SHALL BE FILED on or before April 29, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, The Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the Dock-

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[11] *Id.* at 1196.
[12] Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990).
[13] *Id.* at 2769, *quoting* Regular Common Carrier Conference v. United States, 793 F.2d 376, 379 (D.C. Cir. 1986)
[14] *Id.* at 2770.
[15] This Act is now codified as 47 USC § 226.
[16] 47 C.F.R. §§ 1.415, 1.419.

ets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. For further information, contact Gary Phillips, (202) 632-4047, or Andy Lachance, (202) 632-4047, Policy and Program Planning Division, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

Reason for Action

This rulemaking proceeding is initiated to obtain comment on the lawfulness of current forbearance rules in light of a complaint filed by AT&T alleging, in effect, that these rules violate the Communications Act.

Objectives

The Commission seeks to review the lawfulness and future application of forbearance for interstate common carriers. It also seeks comment regarding what rules would need to be changed and how those rules should be changed if forbearance is found to be unlawful.

Legal Basis

The proposed action is authorized under sections 4 and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 201-205.

Reporting, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Any rule change in this proceeding could have a significant impact on a broad range of telecommunications common carriers. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The notice does not propose new rules or alternative policies. It asks for comment on what rules should be changed in the event forbearance is unlawful, how these rules should be changed, and whether such changes should apply to all services and/or to all common carriers.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS,
Complainant,

v. File No. E-89-297

MCI TELECOMMUNICATIONS
CORPORATION,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1992; Released: January 28, 1992

By the Commission: Commissioner Quello concurring in the results.

I. INTRODUCTION

1. On August 7, 1989, AT&T Communications filed the above-captioned formal complaint with this Commission pursuant to sections 206 and 208 of the Communications Act[1] and Sections 1.721 *et seq.* of the Commission's Rules.[2] AT&T alleges that MCI Telecommunications Corporation provides common carrier telecommunications services to several customers at rates, and on terms and conditions, that are not filed or contained in interstate tariffs, in violation of section 203 of the Communications Act.[3]

2. Pursuant to our authority under section 208 of the Act, we deny AT&T's complaint in part and dismiss it in part. It would be manifestly unfair to impose liability on MCI for past conduct which the Commission has explicitly authorized. Moreover, the complaint calls into question the prospective lawfulness of longstanding rules that play a fundamental role in our regulation of the interstate marketplace. Any decision relative to those rules could have a profound effect on a broad range of consumers and providers of telecommunications services. This decision should not be made in an adjudicatory proceeding between two parties.

3. The proper procedural vehicle for considering changes in our forbearance rule is a rulemaking proceeding. In a companion order adopted today, we institute such a proceeding so that the issues raised by AT&T may be addressed in an appropriate manner.[4]

II. BACKGROUND

4. In 1979, the Commission initiated the *Competitive Carrier* rulemaking proceeding in order to consider amendment of the tariff filing requirements for competitive common carriers, as well as other rule changes relating to facilities and service authorizations."[5] In the *Second Report and Order*, adopted in 1982, the Commission concluded that nondominant telecommunications common carriers -- defined as those carriers without market power -- lacked both the incentive and ability rationally to charge rates that would violate the Communications Act's substantive requirements that rates be just and reasonable and not unreasonably discriminatory.[6] For such carriers, the Commission concluded that tariff filing requirements tended to "inhibi[t] price competition, service innovation and the ability of firms to respond quickly to market trends,"[7] and therefore were inconsistent with the Act's broader mandate "to make available, .. to all people of the United States a rapid, efficient Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges."[8] Accordingly, the Commission adopted its previous tentative conclusion that, in these circumstances, section 203 of the Act did not mandate the filing of tariffs by nondominant carriers.[9]

5. Taking a cautious, incremental approach, the Commission limited the scope of the initial forbearance rule to resale carriers, ordering that such carriers "no longer need adhere to... the tariff filing requirements of section 203," although they were free to continue to file tariffs if they so chose.[10] One year later, in the *Fourth Report and*

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[1] 47 U.S.C. §§ 206 and 208.

[2] 47 C.F.R. § 1.721 *et seq.*

[3] 47 U.S.C. § 203. Section 203(a) provides that "[e]very common carrier... shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection, schedules showing all charges for itself... and showing the classifications, practices and regulations affecting such charges." Section 203(c) provides that "[n]o carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act, .. and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication, or for any service in connection therewith..."

[4] *See* Tariff Filing Requirements for Interstate Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 92-13, FCC 92-35, adopted January 24, 1992.

[5] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308, 309 (1979).

[6] *See* 47 U.S.C. §§ 201(b), 202(a).

[7] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Second Report and Order, 91 FCC 2d 59, 65 (1982).

[8] *Id.* at 64, *quoting*, 47 U.S.C. § 151.

[9] *Id.* at 71, *citing*, Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore, Further Notice of Proposed Rulemaking, 84 FCC 2d 445, 479, 484 (1981). The Commission concluded that the statute's substantive standards could be enforced most effectively against nondominant carriers through the complaint procedures specified in section 208 of the Act, rather than through tariff investigations. Second Report and Order, 91 FCC 2d at 70-71. As we state in note 26, *infra*, we do not consider AT&T's complaint an attempt to enforce the substantive provisions of the statute. AT&T, in this case, is using the complaint process in order to attempt to change a long-standing Commission rule.

[10] *Id.* at 73.

Order, the Commission extended forbearance to all nondominant interexchange carriers (IXCs) including so-called "specialized carriers" such as MCI.[11]

6. Neither AT&T nor any other participant in the *Competitive Carrier* proceeding sought judicial review of the Commission's decision to forbear from tariff regulation of nondominant carriers. The Commission to date has not reconsidered those policies and rules, and no court has reviewed them.[12] Today there are in excess of four hundred nondominant IXCs that offer common carrier services.[13] Few, if any, of these carriers file tariffs for all their service offerings, and most do not file any tariffs at all.

A. The Complaint

7. AT&T's complaint alleges that MCI provides interstate telecommunications services to large business customers, at rates and on terms and conditions that are not filed or contained in MCI tariffs.[14] According to AT&T, MCI's actions violate section 203 of the Communications Act.

8. AT&T argues that MCI is not relieved of its obligation to file tariffs by its classification as a nondominant carrier under the Commission's *Competitive Carrier* rules. In support of its position, AT&T cites *MCI v. FCC*, which, it claims, held that the tariffing provisions of Section 203 are mandatory, and may not be lifted as to any carrier.[15] AT&T also cites a 1990 Supreme Court decision, *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, which, AT&T claims, confirms that MCI's conduct violates section 203.[16]

B. MCI's Response

9. MCI admits that it has provided service to the six named customers other than by tariff[17] but argues that AT&T has failed to establish a *prima facie* case against MCI. MCI claims that it has, at all times, abided by the Commission's *Competitive Carrier* rules and that its actions therefore fully complied with the Communications Act as interpreted and applied by the Commission.[18] MCI argues that *MCI v. AT&T* is inapposite to AT&T's complaint since that case only decided that mandatory forbearance was unlawful.[19] Likewise, MCI argues that, since *Maislin* involved a different agency under a different statute involving different factual circumstances, that case has no bearing on the non-tariff arrangements that MCI and other nondominant IXCs have entered into with customers.[20]

10. MCI also argues that AT&T's complaint is fundamentally a petition for reconsideration of the Commission's *Competitive Carrier* rules. It claims that, as such, the complaint is untimely in violation of Section 405 of the Act and Section 1.106(f) of the Commission's Rules.[21]

11. Finally, MCI argues that AT&T's complaint is not the proper vehicle for modifying the *Competitive Carrier* rules. It states that if the Commission were to decide within the context of the complaint that MCI's failure to tariff its service to some customers is a violation of Section 203 of the Act, the Commission would be modifying *Competitive Carrier* without benefit of an appropriate rulemaking. It argues that any reassessment of those policies and rules should involve all parties who are potentially affected by such reassessment.[22]

III. DISCUSSION

12. We now deny AT&T's complaint in part and dismiss it in part.[23] We deny AT&T's complaint insofar as it seeks damages against MCI for its past conduct in offering service at rates and on terms and conditions not contained in tariffs filed with the Commission. That claim directly conflicts with the duly adopted "forbearance" rule upon which MCI was entitled to rely. We dismiss AT&T's complaint insofar as it seeks injunctive relief requiring MCI to file tariffs in the future. AT&T seeks, in effect, the wholesale repeal of that rule, which has governed interexchange competition for the better part of a decade.

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[11] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fourth Report and Order, 95 FCC 2d 554 (1983). The Commission also expanded the class of nondominant IXCs to include miscellaneous common carriers, domestic satellite carriers (domsats), domsat resellers, domestic operations of Western Union, international record carriers, other record carriers, and interexchange carriers affiliated with exchange telephone companies. *Id.* 95 FCC 2d at 557.

[12] Later in the *Competitive Carrier* proceeding, the Commission adopted rules which compelled nondominant carriers to cancel their existing tariffs and prohibited future tariff filings. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Sixth Report and Order, 99 FCC 2d 1020 (1985). Mandatory forbearance, as it was called, was overturned after judicial review. *See* MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (hereinafter "MCI v. FCC"). The court in that case, however, explicitly "d[id] not reach the question whether the FCC's earlier permissive orders are invalid." *Id.* at 1190-1191, n. 4.

[13] Summary of Long Distance Carriers, Industry Analysis Division, FCC, November 22, 1991, Table 1.

[14] Specifically, AT&T alleges that MCI provides off-tariff service to Merrill Lynch, the Westin Hotel Company, United Airlines, the Department of Defense, the University of Colorado at Boulder, and Uniguard Security Insurance Program. AT&T Complaint at 7-10.

[15] AT&T Complaint at 3, *citing*, MCI v. AT&T, 765 F.2d at 1188, 1192-93.

[16] Motion of American Telephone and Telegraph Company for Summary Decision at 7-11, *citing*, Maislin Industries, U.S., Inc. v. Primary Steel, Inc., _____ U.S., _____ 110 S. Ct 2759 (1990) (hereinafter "Maislin"). In March 1990, we initiated a comprehensive examination of the state of competition in the long-distance marketplace with a view toward relaxing some of our regulatory controls over AT&T. Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627 (1990). Pending completion of this proceeding, we deferred consideration of AT&T's complaint. The Commission recently adopted rules in that proceeding. Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880 (1991), *recon. pending*.

[17] MCI's Opposition To Motion To Compel at 2.

[18] MCI's Motion to Dismiss at 1-3, 7-9.

[19] MCI's Motion to Dismiss at 6-7, 16-18.

[20] MCI's Opposition to Motion of American Telephone and Telegraph Company for Summary Decision at 4-5.

[21] Section 405 of the Act and Section 1.106(f) of the Commission's Rules establish a 30-day deadline for filing requests for reconsideration of Commission orders. *See* 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

[22] MCI's Motion to Dismiss at 13-15.

[23] We note that section 208(a) of the Communications Act requires the Commission to investigate complaints "in such manner and by such means as it shall deem appropriate."

We find such broad relief to be inappropriate in the context of this adjudicatory proceeding between only two of the industry's numerous participants. By companion order adopted today, we initiate a rulemaking proceeding to reexamine our forbearance rule.[24]

13. We deny AT&T's complaint insofar as it claims that MCI is liable for damages because its practice of providing service off-tariff violates section 203 of the Act. MCI's conduct, in this regard, at all times complied with what the Commission, in the *Fourth Report and Order*, has said MCI may do, *i.e.*, provide interstate telecommunications service at rates and on terms that are not contained in tariffs on file with the Commission.[25] Contrary to AT&T's claim that the forbearance policy reflects merely an exercise of the Commission's prosecutorial discretion, the *Fourth Report and Order* adopted a binding substantive rule that removed the requirement that nondominant carriers such as MCI file tariffs. Under these circumstances, it would be manifestly unfair to entertain AT&T's claim that MCI's alleged past conduct, which the Commission explicitly approved in advance, may give rise to a finding of liability.[26] Any off-tariff service offerings by MCI have been made pursuant to rules promulgated by the FCC in orders that were not challenged on review and have long since become final. We will not award damages against MCI based simply on allegations made years later that the rules to which MCI conformed its conduct are beyond our authority to adopt.

14. We also dismiss AT&T's complaint insofar as it seeks prospective relief enjoining MCI from providing off-tariff services. This claim, while nominally stated in terms of a request for relief against MCI, is in practical effect a challenge to the Commission's previously adopted and effective forbearance rule.

15. It is well established that agencies have broad discretion in determining whether to make policy via rulemakings or adjudications. Thus, in *SEC v. Chenery*, the United States Supreme Court said that "the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency."[27] The Court recognized, however, that rulemaking proceedings are more appropriate for considering general rules of widespread applicability.[28]

16. The Commission's forbearance rule was adopted in a notice and comment rulemaking proceeding and has been in place for almost ten years. This rule represents one of the cornerstones of our regulation of the long-distance industry. Any change in this fundamental policy would have a significant impact on a broad range of customers and providers of telecommunications services across the nation. It would be inappropriate for us to consider a modification or repeal of this policy, with so potentially widespread an impact, in the context of a two-party adjudicatory proceeding, as opposed to a rulemaking proceeding. In a rulemaking, all interested parties will have the opportunity to comment. In addition, a rulemaking proceeding will permit us to address our forbearance rule as it applies to all nondominant carriers, and to consider and implement any changes that we may make to it on an industry-wide basis.[29] Given the fundamental importance of these matters, the coordinated and comprehensive approach made possible by a rulemaking will reduce industry uncertainty, while ensuring the smoothest possible transition to any new rules that may be necessary.

IV. CONCLUSION

17. We now deny in part and dismiss in part AT&T's complaint. To the extent that AT&T seeks damages against MCI for its past conduct in offering service at rates and on terms and conditions not contained in tariffs filed with the Commission, AT&T's claim directly conflicts with the duly adopted and effective "forbearance" rule upon which MCI was entitled to rely. To the extent that AT&T seeks injunctive relief requiring MCI to file tariffs in the future, we find such broad relief changing the basic rules governing the long-distance industry to be inappropriate in the context of this adjudicatory proceeding between only two of the industry's numerous participants. The proper procedural vehicle for considering changes in our forbearance rule is a rulemaking proceeding. In a companion order adopted today, we institute such a proceeding so that the issues raised by AT&T may be addressed in an appropriate manner.

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[24] *See* note 4, *supra*.

[25] While AT&T asked the Commission in its complaint to investigate whether MCI had violated sections 201(b) and 202(a) of the Communications Act, *see* AT&T Complaint at 12-13, it appears to have disavowed this request and limited its complaint to alleged violations of section 203 of the Act. *See* AT&T Petition for Writ of Mandamus, Case No. 91-1487 (D.C. Cir., filed October 4, 1991), at 2-3; MCI Telecommunications Corp. v. FCC, No. 89-1382, Transcript of Oral Argument held September 11, 1990, at 50-51 (comments of AT&T counsel in petition for review of Commission's Tariff 12 decision).

[26] *Cf.* Arizona Grocery v. Atchison, Topeka and Santa Fe Railway Co., 284 U.S. 370, 389 (1932); Nader v. FCC, 520 F.2d 182, 202-203 (D.C. Cir. 1975) (rates charged consistent with agency prescription protect carrier against subsequent claim that rate was unlawful). *See also* Bowen v. Georgetown University Hospital, _____ U.S., _____ 109 S. Ct. 468, 480 (1988) (Scalia, J., concurring) (suggesting that retroactive adjudication may be improper where conflicting "preexisting interpretive rule construing [statutory] requirements is in effect").

[27] 332 U.S. 194, 203 (1947).

[28] *Id.* at 202, 203; *see also* American Federation of Government Employees v. FLRA, 777 F.2d 751, 759 (D.C. Cir. 1985); Telocator Network of America v. FCC, 691 F.2d 525, 551 (D.C. Cir. 1982).

[29] By contrast, any order that we issue on AT&T's complaint would necessarily bind only MCI. *See* NLRB v. Wyman-Gordon Company, 394 U.S. 759, 763-766 (1969) ("adjudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein... But this is far from saying... that commands, decisions or policies announced in adjudication are 'rules' in the sense that they must, without more, be obeyed by the affected public.") At the same time, such an order would have major precedential implications for other nondominant IXCs, and could, depending upon the decision, create considerable uncertainty both as to their regulatory status and the lawfulness of many of their current offerings.

V. EX PARTE RULES

18. In light of the interrelationship between this proceeding and the Notice of Proposed Rulemaking we adopt today, to the extent this complaint proceeding remains pending through a petition for reconsideration or appeal of this order, the proceeding will henceforth be deemed a non-restricted proceeding under the Commission's *ex parte* rules.[30] Ex parte presentations will be permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules.[31]

VI. ORDERING CLAUSE

19. For the reasons set forth above, pursuant to 47 U.S.C. § 208, IT IS ORDERED THAT AT&T'S above-referenced complaint is DENIED in part and DISMISSED in part.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[30] *See* 47 C.F.R. § 1.1200(a).

[31] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture	**CC Docket No. 89-79**
Filing and Review of Open Network Architecture Plans	**CC Docket No. 88-2**

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 1992; Released: January 31, 1992

By the Chief, Common Carrier Bureau:

1. In the *Part 69/ONA Order*, the Commission required the Bell Operating Companies (BOCs) to file federal tariffs for the basic service elements (BSEs) listed in their amended Open Network Architecture (ONA) plans, and to do so by November 1, 1991.[1] Although each BOC filed a set of ONA tariffs by that date, no BOC tariffed all of the BSEs listed in its amended plan. Each omitted at least one such service from its filing, but argued that the service should not be federally tariffed, both in the filing and in a separate formal waiver request.[2] In the *ONA Further Amendments Order*, the Commission stated that it did "not look favorably upon the BOCs' withdrawal of services that were approved in their ONA plans."[3] Therefore, we have denied more than one third of the BOCs' requests, and granted the BOCs' requests only where they have demonstrated with sufficient specificity that the service should not be federally tariffed at this point in time. Moreover, nearly half of the waivers granted are only temporary, and the BOCs will be required to tariff these services in the near future. Another one third of the waiver requests we granted are for services that will be available, although not federally tariffed. These services will be offered as detariffed billing and collection services, through a different federally tariffed offering, or as complementary network services (CNSs). For the reasons discussed herein, we grant the waiver requests of BellSouth, Southwestern Bell, and US West, with respect to all services requested; deny Pacific Bell's request, with respect to all services requested; and grant in part and deny in part the requests of Ameritech, Bell Atlantic, and NYNEX.

2. While many of the waiver requests raise facts unique to one BOC, a number of others involve common concerns. Therefore, we address two arguments made by several BOCs before proceeding to address the specifics of each BOC's waiver request. A number of BOCs argue that a service is technically infeasible or that there is no demand for the service, and therefore they should not be required to file a federal tariff for the service. With respect to these arguments, we note that the ONA orders directed that the BOC ONA plans include services that the BOCs identified as technically feasible and for which there was potential demand.[4] The BOCs face a high hurdle to convince us that services that formerly were technically feasible are no longer feasible, despite the current environment of rapid technological progress in this industry. In addition, some BOCs try to distinguish between intrastate and interstate demand, claiming that while intrastate demand might justify filing state tariffs, it would not -- in the absence of expected interstate demand -- justify the filing of federal tariffs. We do not accept this argument. The Commission has consistently required dual tariffing of BSEs listed in approved ONA plans.[5] If a BOC included a service in its amended plans, based on expected demand, then it should give interstate users the opportunity to evaluate the benefits of the service in conjunction with its price.

Ameritech

3. Ameritech requests a waiver to refrain from tariffing five services. We grant Ameritech's request with respect to three of the services and deny its request with respect to

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[1] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, CC Docket Nos. 89-79 and 87-313, 6 FCC Rcd 4524 (1991) (*Part 69/ONA Order*); Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, CC Docket No. 88-2, Phase I, 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), *Erratum*, 5 FCC Rcd at 4045, *pets. for recon. pending, pets. for rev. pending*, California v. FCC, (9th Cir. No. 90-70336).*See also*, Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, CC Docket No. 88-2, Phase I, FCC 91-382 (released December 19, 1991) (*ONA Further Amendments Order*).

[2] Oppositions to those waiver requests were filed by the Alarm Industry Communications Committee (AICC), the American Newspaper Publishers Association (ANPA), Independent Telecommunications Network, Inc., and MCI. Replies were filed by all seven BOCs as well as Prodigy Services Company (Prodigy).

[3] *ONA Further Amendments Order*, at para. 10.

[4] The BOCs were required to include BSEs in their ONA plans "based on the expected market demand for such elements, their utility as perceived by enhanced service competitors, and the technical and costing feasibility of such bundling." Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, *Report and Order*, 104 FCC 2d 958, 1065-66 (1986) (*Phase I Order*), *reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration*), *further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration*) *Phase I Order and Phase I Reconsideration Order vacated*, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *Phase II Order vacated* California v. FCC, 905 F.2d 1217; petition for review of *Phase II Order* and *Phase II Reconsideration Order pending*, BellSouth v. FCC (9th Cir. No. 88-7290, filed April 20, 1988).

[5] *See, e.g.*, Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd 1, 48-49 (1988) (*BOC ONA Order*).

the other two for the reasons that follow.[6] Ameritech seeks a waiver for two services that it states it is currently unable to offer as lineside BSEs, although it can offer them as trunkside BSEs. With respect to Reverse Billing (REVERSE BILLING ON CIRCUIT SWITCHED ACCESS), Ameritech's request indicates its intention to try to resolve this technical difficulty,[7] and there is no specific opposition to Ameritech's request to refrain from tariffing this service. Therefore, we grant this request, conditioned on Ameritech's commitment to resolve the remaining difficulties and offer the service as a lineside BSE as soon as it is technically feasible.

4. As for Call Detail Recording (CDR) (CALL DETAIL RECORDING REPORTS), we note that other BOCs request waivers for this service, arguing that it is a detariffed billing and collection service. No one opposes those requests and we grant them in this order, as discussed below. Ameritech, however, has apparently tariffed this service for use with its trunkside BSA. In the *Ameritech ONA Tariff Order*, we set for investigation the issue of whether Ameritech's CDR to 900 service can properly be tariffed in light of the Commission's *Billing and Collection Order*.[8] We grant Ameritech's waiver with respect to its lineside CDR service, pending the outcome of our investigation. If we conclude there that CDR should not be tariffed under the Commission's *Billing and Collection Order* we will expect Ameritech to detariff all of its CDR services.

5. Ameritech also asks to be permitted to withhold its tariff for Forwarding of Additional Dialed Digits (FADD) based on its two years of experience offering the service. Ameritech states that there is neither past nor anticipated demand for this service. MCI challenges this justification on general terms.[9] Although we look with disfavor on requests based on the argument that there is no demand, in this case Ameritech has two years of actual experience with the service, and no party has offered a specific challenge to Ameritech's claim. We therefore will permit Ameritech to withdraw this BSE. In the future, if there is a demand for this service, we expect that Ameritech will tariff it once again.[10]

Ameritech also asks to reclassify Access to Extended Superframe Data Channel (EXTENDED SUPERFRAME CONDITIONING) as a "Basic Serving Arrangement (BSA) rather than a BSE. While Bell Atlantic, BellSouth, and US West all treat extended superframe conditioning as an alternative to dedicated high capacity digital access, we note that Southwestern Bell treats it as a BSE. Therefore, in the absence of specific evidence that this service does not meet our definition of a BSE,[11] we cannot find that Ameritech has made the showing necessary to justify its waiver request in this respect.

7. Finally, Ameritech requests permission not to file a tariff for its Notification of Subscriber Line Breaks (VERIFY INTEGRITY OF SUBSCRIBER LINES) service. The Alarm Industry Communications Committee (AICC) strongly objects to the withdrawal of this service, claiming that its representatives have worked long and hard with the Information Industry Liaison Committee (IILC) to produce functional specifications for a local loop break detection network capability, like this service, and that an acceptable description was adopted by the IILC on November 9, 1989.[12] Furthermore, the AICC states that representatives from both the alarm and security industries have worked with the T1E1.1 Committee of the Exchange Carrier Standards Association (ECSA) to develop a technical standard for this capability and it claims that the Committee has not found any aspect of the service to be "technically infeasible" due to equipment or other problems.[13] The AICC states that access to this developing service technology, known variously as Derived Local Channel, Scan Alert, and Spread Spectrum Transmission Service is critically important to the alarm services industry.[14] Moreover, the AICC also notes that its members have invested significant amounts of capital in the Ameritech technology.[15]

8. Ameritech responds that the service sought by the alarm industry is not compatible with the evolving Ameritech network, as it is upgraded to include more fiber-based loop and digital loop carrier systems.[16] It argues that neither of the two technology platforms that support the service are compatible with its evolving network, because one platform would require expensive plug-in retrofits and the other would require the development of an entirely new retrofit method.[17] Ameritech adds that a large portion of its current exchange customers have been plagued by service difficulties with this service, and this has created higher than expected maintenance costs for Ameritech. In addition, Ameritech states that efforts to improve performance have met with little success.[18] Ameritech argues that this justifies the suspension of investment in the service.

9. We disagree. Ameritech certainly should upgrade its network in a timely manner according to its perceived needs. However, we cannot permit Ameritech planning to ignore the commitments that it made in its ONA plans,

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[6] We also accept Ameritech's explanation that it has filed a tariff for Ability to Reconfigure Networks (NETWORK RECONFIGURATION) in its transmittal number 562. The format we use for identifying BSEs is to use the name employed by the particular BOC followed -- in parentheses and capital letters -- by the generic name of the service (from the ONA Services Users Guide) if the name is different from the name employed by the BOC.

[7] Ameritech Waiver Pet. at 4-5.

[8] Ameritech Operating Companies Revisions to Tariff FCC No. 2, Open Network Architecture, Memorandum Opinion and Order, DA 91-1633 (Comm.Carr.Bur. December 27, 1991); Detariffing of Billing and Collection Services, Memorandum Opinion and Order (Reconsideration), CC Docket No. 85-88, 1 FCC Rcd 445 (1986) (*Billing and Collection Order*).

[9] MCI Opp. at 6.

[10] For example, interested parties may use the 120-day process established by the Commission to request that Ameritech provide this, or any other service. *See*, Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, CC Docket No. 88-2, Phase I, FCC 91-382, released Dec. 19, 1991, at n.24 & n.34.

[11] *BOC ONA Order*, 4 FCC Rcd at 36.

[12] Alarm Industry Opp. at 6-7.

[13] Id. at 7-8.

[14] Id. at 6, citing AICC's Pet. to Reject or Suspend Ameritech Transmittal No. 499, Jan. 2, 1991, at 5-6.

[15] Id. at 6-8.

[16] Ameritech Reply at 5 n.10, citing Ameritech Reply to Pets. to Suspend or Reject Transmittal Nos. 499, 500 & 501, Jan. 14, 1991, at appendix 2, iii.

[17] Id.

[18] Id. at iii-iv.

particularly the commitments to potential competitors that have expended significant sums in reliance on these commitments. If a network upgrade threatens the feasibility of a proposed ONA service, Ameritech must take all appropriate steps to permit the service to be offered in an alternative form that is satisfactory to its customers. The evidence that Ameritech has submitted does not convince us that Ameritech has taken those steps in this case. While Ameritech claims that it is working to accommodate the alarm industry, the AICC voices dissatisfaction with Ameritech's actions. Given that it is Ameritech that is seeking a waiver, it is Ameritech that has the burden of introducing sufficient evidence to show us that it is doing enough to accommodate the alarm industry. So far it has failed to do so.

Bell Atlantic

10. Bell Atlantic requests a waiver for nine of its services, and we grant six, at least partially, while denying the other three. First, we address Bell Atlantic's request to withdraw its Caller ID and Bulk Caller Line Identification (CALLING DIRECTORY NUMBER DELIVERY - VIA ICLID and BCLID) services. Bell Atlantic states that it cannot transmit the required calling party information to interexchange service providers because Common Channel Signaling (CCS) interconnection with those carriers is currently incomplete. In addition, Bell Atlantic observes that the FCC's *Caller ID* proceeding is likely to affect how Caller ID will be tariffed.[19]

11. With respect to the *Caller ID* proceeding, it is true that federal rules have not yet been adopted to govern the extent to which the information provided by this offering may be made available to end users or particular other parties. Nevertheless, we do not consider any potential resulting fluctuations in demand for the service to be a sufficient reason to permit the service to be withheld. We are more sympathetic to Bell Atlantic's claim that these services cannot be fully implemented until CCS technology is fully deployed. We agree with MCI that we should take into account the status of CCS implementation.[20] We will, therefore, permit Bell Atlantic to defer filing tariffs for these services until the deployment of CCS makes the offerings practical.

12. Bell Atlantic also requests permission not to tariff its Tandem Routing offering, arguing that the offerings would create a conflict with the Commission's current transport rules.[21] The current transport requirement prohibits LECs from charging different rates for traffic routed through the tandem, and traffic not routed through the tandem. Thus, we agree with Bell Atlantic, NYNEX, US West, and MCI,[22] that a special price for traffic routed through the tandem would be inconsistent with current transport rules. We therefore grant its waiver for this service, pending the outcome of the *Transport* proceeding.[23]

13. Bell Atlantic also claims that tariffing its Alternate Traffic Routing (ALTERNATE ROUTING) BSE would be inconsistent with the current transport rules,[24] although NYNEX, Southwestern Bell, and US West have all filed tariffs to offer the service as a BSE. MCI supports Bell Atlantic on this request,[25] but Bell Atlantic does not provide us with a clear explanation of why such a service would create a conflict with the Commission's rules. We require a more detailed explanation of the perceived conflict before we would be willing to grant a waiver in this case.

14. Bell Atlantic also seeks to refrain from filing a generic rate for Statistical Multiplexer in the Central Office (STATISTICAL MULTIPLEXER). Bell Atlantic argues that customers require too many different variations of the service to make it practical to tariff a generic form of it.[26] No other BOC offers the service, and MCI states that if the service is available to individual customers, there is no need for a waiver.[27] Under these circumstances, we will permit Bell Atlantic to refrain from filing a single generic rate, conditioned on our understanding that Bell Atlantic will offer the service on an individual case basis (ICB).[28]

15. Bell Atlantic offers a very different rationale for justifying the withholding of One Number Service (UNIFORM 7 DIGIT ACCESS NUMBER - REMOTE CALL FORWARDING), another service that no other BOC offers. First, it argues that the NXX 890 is only available now in two states, and is unavailable for use in its other states. Moreover, Bell Atlantic argues that, even where it is available, this designated use would remove 10,000 numbers from the capacity of each area code (NPA), as contrasted to a proposed Advanced Intelligent Network (AIN) service, which will permit seven-digit number translation. Hence, Bell Atlantic states that it is phasing out this service in the two states where it is now available. Given Bell Atlantic's explanation and the lack of any specific opposition, we grant this waiver request.

16. Bell Atlantic asks to withdraw both Direct Inward Dialing Service (CALLED DIRECTORY NUMBER DELIVERY VIA DID) and DID Trunk Queuing because, it claims, it cannot measure the usage of these services.[29] The American Newspaper Publishers Association (ANPA) and MCI question the relevance of this rationale.[30] BellSouth offers the first service and US West proposes to offer both. We see no reason why Bell Atlantic should be unable to designate a billing surrogate for usage. Therefore, we deny Bell Atlantic's request for a waiver with regard to these services. On the other hand, we approve Bell Atlantic's unopposed waiver request regarding Call

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[19] Rules and Policies Regarding Calling Number Identification Service, Notice of Proposed Rulemaking, CC Docket 91-281, 6 FCC Rcd 6752 (1991).

[20] MCI Opp. at 7.

[21] Bell Atlantic Waiver Pet. at 2.

[22] MCI Opp. at 7.

[23] Transport Rate Structure and Pricing, Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 6 FCC Rcd 5341 (1991).

[24] Bell Atlantic Waiver Pet. at 2.

[25] MCI Opp. at 7.

[26] Bell Atlantic Waiver Pet. at 7.

[27] MCI Opp. at 7.

[28] Once Bell Atlantic gains sufficient experience with this service to permit the development of averaged rates, it must file such rates. *See* Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Memorandum Opinion and Order, 4 FCC Rcd 8634, 8642 (1989). In the interim, Bell Atlantic should, nevertheless, offer this service in its tariff on an ICB basis.

[29] Bell Atlantic Waiver Pet. at 4.

[30] ANPA Opp. at 6; MCI Opp. at 6.

Detail Recording Reports, which Bell Atlantic claims is a detariffed billing and collection service, under the Commission's *Billing and Collection Order*, discussed above.

BellSouth

17. BellSouth seeks a waiver for only one service and we grant it.[31] BellSouth initially requested a waiver to withhold Answer Supervision with Line Side Interface because it claimed that neither it nor its manufacturers were able to develop the capability to offer the service with BellSouth's switches.[32] In its reply comments, however, BellSouth modifies its request and seeks a waiver for a limited time only -- through July 1992 -- based on further discussions with its manufacturers.[33] The ANPA and MCI oppose BellSouth's initial request,[34] and Ameritech, Bell Atlantic, and US West have all filed tariffs for the service. It appears that BellSouth is making a good faith effort to work with its switch manufacturers to overcome its difficulties. While we would not be willing to grant an unrestricted waiver to BellSouth, as initially requested, we are willing to grant a limited waiver until July 1992 to permit BellSouth to finish making any changes in its switches necessary to provide this service.

NYNEX

18. NYNEX requests a waiver for nine services, and we grant it for seven of them. First, NYNEX asks for permission to omit Custom Calling Services, including Remote Call Forwarding, from its federal tariffs, claiming that these services are appropriately treated as Complementary Network Services (CNSs). MCI challenges this exclusion as an improper withdrawal due to a lack of demand,[35] but all of the other BOCs characterize these services as CNSs. The Commission has distinguished between BSEs and CNSs according to the customer purchasing the service.[36] If a service is purchased by ESPs (enhanced service providers) it is considered to be a BSE; if it is purchased by end users it is considered to be a CNS. While this distinction allows that services may qualify as both BSEs and CNSs, our own review of the services at issue leads us to concur with NYNEX's argument that (the services are used by end users and not by ESPs, and thus, that they are most appropriately considered to be CNSs and not BSEs. The Commission has determined that CNSs need not be federally tariffed, and so it is reasonable for NYNEX to refrain from filing federal tariffs for these services.[37]

19. NYNEX seeks to withdraw its T1 Transport (MULTIPLEXING - T1 - 1.5 Mbps LINE and TRUNK SIDE) services and its Tandem Routing service based on potential conflict with the Commission's transport rules. MCI supports the waiver requests for T1 transport.[38] Given that special rates for the services would conflict with the Commission's current transport rules, as we noted above, we grant its waiver with respect to all three services pending the outcome of our *Transport* proceeding. We also approve NYNEX's unopposed waiver request regarding

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[31] MCI argues that BellSouth has failed to tariff two additional BSEs from its amended plans. MCI Opp. at 6 n.14, citing AT&T's Pet. for Suspension and Investigation, ONA Access Charge Tariff Filings, filed Nov. 26, 1991, at 1-3. BellSouth answers that it never proposed to offer Cut-off on Disconnect and that it has filed a tariff for 800 Service to DID (DIALED NUMBER IDENTIFICATION VIA IN WATS TO DID). We conclude that BellSouth does not require a waiver for either of these services.

[32] BellSouth Waiver Pet. at 2.

[33] BellSouth Reply at 3-4.

[34] ANPA Opp. at 5-6; MCI Opp. at 7.

[35] MCI Opp. at 7.

[36] Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, CC Docket No. 88-2, 4 FCC Rcd 1, 36 (1988).

[37] Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order on Reconsideration, CC Docket No. 88-2, Phase I, 5 FCC Rcd 3084, 3090 (1990) (*BOC ONA Reconsideration Order*)

[38] MCI Opp. at 7.

Monthly Detailed Recording (CALL DETAIL RECORDING REPORTS),[39] which NYNEX claims is a detariffed billing and collection service, under the Commission's *Billing and Collection Order*, discussed above.

20. NYNEX argues that it does not need a waiver with respect to either Direct Inward Dialing (DID)) (CALLED DIRECTORY NUMBER DELIVERY VIA DID) or DNIS on 800 (DIALED NUMBER IDENTIFICATION VIA INWATS TO DID), claiming that they are technically incompatible with interstate access arrangements.[40] NYNEX claims that it would need to create a new BSA "in conflict with" the *Part 69/ONA Order*, which NYNEX says, limits it to one trunkside and one lineside BSA.[41] NYNEX states that it is technically impossible to bill for DID in a switched access environment. In addition, NYNEX states that only seven digits can be sent to the DID customer, making the service impractical for use on an interstate basis. Ten digits would generally be needed for an interstate service.[42] NYNEX argues that there is no utility to DNIS on 800 in the current interstate switched access environment, because the customer would only receive a single POTS number rather than a set of different 800 numbers. Both the ANPA and MCI challenge NYNEX's position on the first service, and MCI also contests NYNEX's position on the second.[43]

21. We begin by observing that NYNEX misconstrues the directive in the *Part 69/ONA Order* that BOCs tariff one lineside and one trunkside switched access BSA. That rule does not preclude BOCs from introducing new BSAs that may be necessary to support new switched access BSEs. The rule merely requires BOCs to establish a single tariffed rate for a lineside switched access BSA and a single rate for a trunkside switched access BSA, which rates apply irrespective of the different technical variations of the BSA, *e.g.*, technical variations equivalent to Feature Groups B, C, and D. If NYNEX desires to introduce a new BSA associated with switched services, the *Part 69/ONA Order* requires that NYNEX file a waiver petition for the new BSA.[44] Nevertheless, we are convinced that neither service has utility in an interstate environment. We find that the receipt of a single POTS number rather than a set of different 800 numbers eliminates the utility of DNIS on 800 and that the seven-digit limitation on outpulsing eliminates the utility of DID as interstate services. Therefore, we grant NYNEX's waiver with respect to both DID and DNIS on 800.

22. NYNEX also seeks to withhold Trunk Group Make Busy (MAKE BUSY KEY).[45] NYNEX states that its current network structure of 4ESS tandem switches and 5ESS switches at end offices makes it difficult to offer the service in the absence of NYNEX's Circuit 9 alternative BSA, which was specifically designed to address the needs of the ESP industry, but has been abandoned by NYNEX.[46] In light of its original ONA commitment, we expect NYNEX to be making the adjustments necessary to meet that commitment. NYNEX's alternative offer to work to satisfy a customer's need in this area "should a request materialize,"[47] is simply unacceptable. If NYNEX is required to develop a BSA to support a BSE in its plan, it should do so, and file any necessary waivers.

23. NYNEX claims that it is not required to federally tariff Pulsenet (VERIFY INTEGRITY OF SUBSCRIBER LINES), a service desired by the alarm industry. In its November 1, 1991 tariff filing, attached to its waiver request, NYNEX claims that state insurance laws and local municipal requirements typically serve to force alarm services to operate in separate local units rather than on a larger regional basis.[48] NYNEX concludes, therefore, that interstate service is not suitable for the alarm industry. The AICC strongly disagrees with this analysis, noting that alarm service firms are quite capable of satisfying state and local laws without forgoing more efficient regional monitoring procedures for which federally tariffed services are appropriate.[49] In reply, NYNEX does express a willingness to file a federal tariff for the service once it has received specific orders for it.[50]

24. NYNEX also observes that Pulsenet is a BSA and the *Part 69/ONA Order* does not require it to tariff BSAs.[51] While the *Part 69/ONA Order* does not expressly require BOCs to tariff the BSAs in their amended ONA plans, it does not relieve them of the commitments made in their ONA plans. Therefore, while the Commission has not required the BOCs to tariff all of the BSAs in their plans, it retains the authority to require that particular BSAs be tariffed under appropriate conditions. Given the apparent immediate demand for this service by the alarm industry,[52] we expect NYNEX to file a federal tariff for the service, preceded by a waiver request, if one is necessary.

Pacific[53]

25. Pacific requests a waiver for twelve different services. We deny it for all of them. Pacific's initial argument in its waiver request is that it does not need any waiver. It claims that the ONA orders do not require it to file interstate tariffs for BSEs that it deems to be intrastate services and thus only associated with BSAs that are offered in intrastate tariffs.[54] We strongly disagree. The Commission has consistently required that all BSEs be federally tariffed.[55]

26. In the alternative, Pacific requests a waiver to withhold many BSEs because it claims that it lacks an appropriate interstate BSA to support them.[56] Pacific seeks to withhold Availability Control Arrangement (MAKE

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39 NYNEX Waiver Pet. at 4-5

40 NYNEX Waiver Pet. at 3-4.

41 NYNEX Reply at 3-4.

42 NYNEX Reply at 4 n.9; Letters from G. R. Evans and Shelley Harms, NYNEX to Donna Searcy, filed Jan. 23, 1992 and Jan. 30, 1992.

43 ANPA Opp. at 2-3; MCI Opp. at 7.

44 *Part 69/ONA Order*, 6 FCC Rcd at 4527 n.29 and accompanying text (1991).

45 NYNEX Waiver Pet. at 4.

46 NYNEX Reply at 4 n.10.

47 NYNEX Waiver Pet. at 4.

48 NYNEX Waiver Pet. attachment at 27.

49 AICC Opp. at 4-5.

50 NYNEX Reply at 2-3.

51 NYNEX Waiver Pet. at 4.

52 AICC Opp. at 4-5.

53 Nevada Bell has filed a detailed supplementary petition for waiver and we will discuss its waiver requests in a separate order. Pacific also filed a supplementary petition for waiver, but only discussed one additional service, so we will address its initial waiver petition here.

54 Pacific Waiver Pet. at 2-8.

55 *BOC ONA Reconsideration Order*, 5 FCC Rcd at 3088-90 (1990).

56 Pacific Waiver Pet. at 10.

BUSY KEY), Forwarded Call Information (MESSAGE DESK (SMDI)), Activate Message Waiting Indicator (MESSAGE WAITING INDICATOR - ACTIVATION (AUDIBLE)), Electronic Business Set Message Waiting (MESSAGE WAITING INDICATOR - ACTIVATION (VISUAL)), Pollstar or Alarm Plus (VERIFY INTEGRITY OF SUBSCRIBER LINES), IC/VAN Preselection (PRESELECTION FOR DATA SERVICES), and Reverse Charge Acceptance - Packet, all due to the lack of an interstate dedicated network access link (DNAL) or X. 25 line for the latter two services.[57] Pacific claims that it would take one to three years to develop an appropriate BSA and also require a waiver.

27. The AICC, ANPA, and MCI all challenge Pacific's argument.[58] Moreover, at least five other BOCs have recognized that their commitment to file tariffs for BSEs that are associated with a DNAL implies the commitment to file tariffs for the necessary DNAL as well as any necessary waiver petitions for that DNAL.[59] Pacific does not explain why its commitment to file tariffs for the BSEs associated with a DNAL should not also imply a commitment to take the necessary steps to make tariffing those BSEs possible. Therefore, we reject the waiver requests for all seven of these services.

28. Pacific also seeks to withdraw its Direct Inward Dialing to PBX Systems (CALLED DIRECTORY NUMBER DELIVERY VIA DID) service. Pacific claims that it would require one to three years to develop suitable software for this service. On the other hand, Pacific listed this BSE in its ONA plan, implying that the BSE met the four criteria, including technical feasibility, and Bell South and US West are willing to offer the service now. In the absence of any evidence that explains why Pacific's status is different from these other two BOCs, and why this service is no longer technically feasible, we will not approve its waiver with respect to this service.

29. Pacific also seeks to withdraw its Answer Supervision with Line Side Interface service, claiming that the service cannot be offered with the lineside BSA due to inadequate switch software.[60] Pacific estimates the cost of the necessary software upgrade to be about $2 million and states that it would take one to three years. MCI challenges the timeliness of Pacific's argument that the cost is too high, given that Pacific implicitly represented that the service was feasible when Pacific included the service in its ONA plan.[61] As the ANPA argues, it is difficult to understand how the service cannot be offered using currently available software, given that Ameritech, Bell Atlantic, and US West all propose to offer it.

30. Pacific responds that "[d]ifferences in the BOCs' tariffed services are to be expected since the BOCs' regions vary as to demand for services, costs, and embedded network technology."[62] While we certainly recognize this general point, we cannot accept it alone as an adequate explanation of why Pacific cannot offer a service that it committed to offer in its ONA plan, and that three other BOCs are willing and able to offer. In the absence of specific reasons explaining why Pacific's network cannot support services that other BOCs can offer, we will not grant Pacific's waiver regarding this service.

31. Pacific also seeks to withhold Caller ID and Bulk Caller Line ID (CALLING DIRECTORY NUMBER DELIVERY VIA ICLID and BICLID), repeating its claim of a lack of a suitable BSA as well as arguing that there is potential conflict with pending *Caller ID* regulatory proceedings at the Commission and in California.[63] We have explained that we cannot accept Pacific's "lack of a suitable BSA" rationale as the basis for a waiver, and as we discussed above, with respect to Bell Atlantic, we do not believe the federal *Caller ID* proceeding should interfere with the tariffing of this service. Pacific also claims that a pending California proceeding in this area might also pose a conflict, but state regulations should not prevent Pacific from tariffing an interstate service.

32. We agree with Pacific that it did not propose to offer Bridging - Line in its amended plans and, therefore, we will permit it to correct its Nov. 1, 1991 filing, which mistakenly included the service. On the other hand, we expect Pacific to include Selective Call Acceptance in its federal tariff. Pacific committed to offer this service in its approved ONA amended plan and, as we reject the argument that Pacific has no suitable interstate BSA, it has not demonstrated why it cannot offer this service.[64]

Southwestern Bell

33. Southwestern Bell requests a waiver for two services and we grant both of them. Southwestern seeks a waiver to withdraw its Called Number Identification (CALLED DIRECTORY NUMBER DELIVERY VIA ISDN Q.931) and Calling Number Identification (CALLING BILLING NUMBER DELIVERY VIA ISDN Q.931).[65] Southwestern explains that these BSEs were developed prior to its final decision to deploy Signaling System 7 technology and do not conform to industry Integrated Services Digital Network (ISDN) standards. Southwestern states that problems with its vendor software currently prevent it from offering the comparable SS7 Called Number Identification service. Given the lack of opposition to this waiver, we will grant it on the condition that Southwestern continue to attempt to resolve its software difficulties and provide the service as soon as possible.

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[57] Pacific Waiver Pet. at 12-13, 15.
[58] AICC Opp. at 5-6; ANPA Opp. at 2-4; MCI Opp. at 7-8.
[59] Petitions for Waiver of Part 69 of the Commission's Rules, Dedicated Network Access Lines, Open Network Architecture, DA 92-119, (Comm.Carr.Bur. January 30, 1992).
[60] Pacific Waiver Pet. at 11-12.
[61] MCI Opp. at 8.
[62] Pacific Reply at 13 .
[63] Pacific Waiver Pet. at 12-13, 14-15.
[64] Pacific Waiver Pet. at 16. See Pacific Amended ONA Plans, appendix AA section 2, 34th service.
[65] SW Bell Waiver Pet.

US West

34. US West requests a waiver for eight services and we grant it with respect to them all. US West seeks permission not to tariff three services, in its amended ONA plans that it considers to be redundant services. It claims that ANI Order Entry Service (ORDER ENTRY SERVICE) is already available as ANI.[66] MCI agrees that the service is duplicative.[67] US West also claims that both Market Expansion Line (REMOTE CALL FORWARDING) and Surrogate Client Number are services that customers can secure by purchasing its Call Forwarding - Variable service.[68] The ANPA questions whether the services are truly duplicative,[69] but it offers no details of differences between the services to refute US West's contention. Moreover, MCI agrees with US West that these services are duplicative.[70] Given MCI's agreement with US West and the failure of ANPA to identify any differences between these apparently duplicative services, we grant its waiver with respect to all three of these services. We also grant US West's request to withdraw its Tandem Routing service,[71] pending the resolution of the *Transport* proceeding, for the reasons discussed above.

35. US West also seeks to refrain from separately tariffing Improved Transmission Performance (TRANSMISSION IMPROVEMENT FOR TRANSMISSION SWITCHED SERVICE). Although it has tariffed the provision of this higher quality service as an optional feature in its state tariffs, US West argues that interexchange industry standards require this enhancement be provided to all customers and that it is not optional.[72] As this service is not an optional feature for interexchange customers, it does not qualify as an interstate BSE, and therefore we grant US West's waiver regarding this request.

36. US West asks to be allowed not to file a tariff for its Information Access or Community Link (MENU ACCESS TRANSLATOR - GATEWAY) service, noting that the Commission has not yet ruled on whether the service is a basic service, or an unregulated enhanced service.[73] Pending resolution of the gateway waiver, US West is offering the gateway as a basic service. MCI supports US West's request,[74] and we approve it, pending the resolution of US West's pending gateway waiver request. We also approve US West's waiver regarding Network Access Service (CALL DETAIL RECORDING REPORTS VIA NXX SCREENING),[75] given US West's characterization of it as a detariffed billing and collection service, according to the Commission order discussed above.

37. US West also seeks to withhold, at least temporarily, its Network Monitoring (AUTOMATIC CIRCUIT AND TRUNK MONITORING). US West explains that there has been a delay in the manufacturing process as well as cost increases. Moreover, it is now attempting to establish a mediated access gateway to be available in early 1993. No one opposes the waiver request and US West and MCI state that the service is duplicative of other services.[76] We therefore grant this request.

ORDERING CLAUSES

38. ACCORDINGLY, IT IS ORDERED that Ameritech's petition for waiver of the Commission's ONA Tariff Order IS GRANTED IN PART, with respect to Call Detail Recording, Reverse Billing, and Forwarding of Additional Dialed Digits, and DENIED IN PART, with respect to Access to Extended Superframe Data Channel and Notification of Subscriber Line Breaks.

39. IT IS FURTHER ORDERED that Bell Atlantic's petition for waiver of the Commission's ONA Tariff Order IS GRANTED IN PART, with respect to Caller ID, Bulk Caller Line Identification, Tandem Routing, Statistical Multiplexer in the Central Office, One Number Service, and Call Detail Recording Reports, and DENIED IN PART, with respect to Alternate Traffic Routing, Direct Inward Dialing Service, and DID Trunk Queuing.

40. IT IS FURTHER ORDERED that BellSouth's petition for waiver of the Commission's ONA Tariff Order IS GRANTED.

41. IT IS FURTHER ORDERED that NYNEX's petition for waiver of the Commission's ONA Tariff Order IS GRANTED IN PART, with respect to Custom Calling Services, including Remote Call Forwarding, T1 Transport (trunk and line side), Tandem Routing, Monthly Detailed Recording, DNIS on 800, and Direct Inward Dialing (DID)) and DENIED IN PART, with respect to Trunk Group Make Busy and Pulsenet.

42. IT IS FURTHER ORDERED that Pacific Bell's petition for waiver of the Commission's ONA Tariff Order IS DENIED.

43. IT IS FURTHER ORDERED that Southwestern Bell's petition for waiver of the Commission's ONA Tariff Order IS GRANTED.

44. IT IS FURTHER ORDERED that US West's petition for waiver of the Commission's ONA Tariff Order IS GRANTED.

45. IT IS FURTHER ORDERED that Ameritech, Bell Atlantic, NYNEX, and Pacific SHALL FILE, within 21 days of the release date of this Order, tariff revisions to become effective on less than 15 days' notice that are consistent with this Order. For these purposes, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, and assign Special Permission No. 92-93.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[66] US West Waiver Pet at 5.
[67] MCI Opp. at 8.
[68] US West Waiver Pet. at 6-7.
[69] ANPA Opp. at 6.
[70] MCI Opp. at 8.
[71] US West Waiver Pet. at 7.
[72] US West Reply at 3-4.
[73] US West Pet. at 4. See NYNEX Pet. for Declaratory Ruling, Jan. 17, 1989, requesting a ruling that the NYNEX INFO-LOOK gateway service was a "basic" service.
[74] MCI Opp. at 8.
[75] US West Waiver Pet. at 3.
[76] MCI Opp. at 8.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal Nos. 3498 and 3823

Tariff F.C.C. No. 15

ORDER

Adopted: January 27, 1992; Released: January 28, 1992

By the Chief, Common Carrier Bureau:

1. AT&T filed Transmittal No. 3498 on September 30, 1991, to revise the general regulations of Tariff F.C.C. No. 15. Specifically, Transmittal 3498 provides that AT&T's Competitive Pricing Plans (CPPs) will be designed to respond to competitive circumstances affecting specific customers and, as such, are available to those specific customers. In addition, the CPPs will be available to all similarly situated customers. On January 27, 1992, AT&T filed on one day's notice Transmittal No. 3823, which includes the revisions to the Tariff 15 general regulations originally filed in Transmittal 3498. Transmittal 3823 was filed to cure procedural defects relating to the sequence of tariffs filed by AT&T in response to the *Tariff 15 RCI Order*.[1] Transmittal 3823 is scheduled to become effective on January 28, 1992, the scheduled effective date for Transmittal 3498 as well.

2. Petitions to reject Transmittal 3498 were filed on October 11, 1991, by MCI Telecommunications Corporation (MCI) and on October 15, 1991, by US Sprint Communications Company Limited Partnership (Sprint). On October 15, 1991, the Competitive Telecommunications Association (CompTel) filed a petition to reject, or, in the alternative, to suspend and investigate, Transmittal 3498. AT&T replied to these petitions on October 16, 1991.

3. The petitioners contend that Transmittal 3498 does not cure the deficiencies in Tariff 15 which the Commission found unlawful in the *Tariff 15 RCI Order*. MCI Petition at 2; Sprint Petition at 2. *See also* CompTel Petition at 2. They argue that the transmittal is unreasonably vague and ambiguous in violation of Section 203 of the Communications Act, 47 U.S.C. § 203, and Sections 61.2 and 61.54(j) of the Commission's Rules, 47 C.F.R. §§ 61.2, 61.54(j). CompTel Petition at 3; MCI Petition at 3-4. *See also* Sprint Petition at 2. Such vagueness, argues MCI, will give AT&T license to determine customer eligibility so as to permit discriminatory pricing and terms among AT&T customers. MCI Petition at 3-4. CompTel argues that the Commission should require AT&T to explain in detail the circumstance and procedures by which limited service offerings will be available to other customers, as it required of AT&T in another proceeding. CompTel Petition at 5-6.

4. Sprint contends that the Commission found the offering for Resort Condominiums International (RCI)[2] unlawful based on the anticompetitive impact of the pricing mechanism, rather than on the specific language contained in the CPP regarding its availability. Sprint Petition at 2. The petitioners argue that the anticompetitive pricing mechanism will still be available to AT&T under Tariff 15, particularly in those CPPs in which AT&T is bundling 800 service with other services in contradiction of the *Interexchange Rulemaking*.[3] Sprint Petition at 2-5; CompTel Petition at 6-7. *See also* MCI Petition at 2-3. Sprint claims that because the net revenue test cannot be used to assess the lawfulness of customer-specific offerings, AT&T is circumventing all price cap regulations by placing each CPP offering in Tariff 15. Sprint Petition at 8-9. Finally, CompTel argues that although AT&T bases Transmittal 3498 on the premise that the revised language complies fully with the competitive necessity test, the competitive necessity test does not justify single-customer discounts. CompTel Petition at 6.

5. In its reply AT&T contends that Transmittal 3498 fully addresses the Commission's concerns, expressed in the *Tariff 15 RCI Order*, in that the revised language does not announce how or whether AT&T will respond to specific competitive circumstances, does not require customers to disclose an offer of service from an AT&T customer, and provides that the offered rates will be "available to all similarly situated customers." AT&T Reply at 3-4. AT&T also denies that the "similarly situated" standard is impermissably vague or allows AT&T in its sole discretion to decide whether to offer a CPP to more than one customer. This standard, contends AT&T, meets the provisions of the Communications Act and the Commission's requirements that "like" services and tariffed services be "generally available to similarly situated customers." *Id.* at 57. AT&T then claims that the petitioners' argument that AT&T intends to use Tariff 15 to circumvent the *Interexchange Rulemaking* is irrelevant to the instant tariff revisions. Moreover, argues AT&T, the *Interexchange Rulemaking* does not prohibit AT&T from responding under the competitive necessity doctrine to competitors' customer-specific offers. AT&T states that unless the Commission intended to establish a blanket prohibition in the *Tariff 15 RCI Order* against such responses by AT&T, it should allow these tariff revisions to take effect. *Id.* at 4-5, 7-8.

6. The Common Carrier Bureau has reviewed the transmittals and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to require rejection.

7. On January 21, 1992, the U.S. Court of Appeals for the District of Columbia Circuit issued a remand of the *Tariff 15 RCI Order*, contingent on the Commission con-

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[1] AT&T Communications, CC Docket No. 90-11, 6 FCC Rcd 5648 (1991) (*Tariff 15 RCI Order*), *app. for stay denied*, AT&T v. FCC, No. 91-1504 (D.C. Cir. Dec. 2, 1991), *app. for stay granted*, AT&T v. FCC, No. 91-1504 (D.C. Cir. Dec. 17, 1991), *remand granted*, AT&T v. FCC, No. 91-1504 (D.C. Cir. Jan. 21, 1992).

[2] AT&T F.C.C. Tariff No. 15, Transmittal No. 1854, filed Oct. 23, 1989, as CPP2.

[3] Competition in the Interstate Interexchange Marketplace, Report and Order, CC Docket No. 90-132, 6 FCC Rcd 5880, 5905 (1991) (*Interexchange Rulemaking*).

tinuing to stay the Order.[4] The transmittals could be affected by the Commission's decision on remand in CC Docket No. 90-11, as well as the outcome of our investigation of other CPPs in CC Docket No. 90-327 and 91-116. Therefore, Transmittals 3498 and 3823 take effect subject to the outcome of the remand proceeding in CC Docket 9011 and the investigations in CC Dockets 90-327 and 91-116.

8. Accordingly, IT IS ORDERED that the petitions to reject or, in the alternative, to suspend and investigate AT&T Tariff F.C.C. No. 15, Transmittal No. 3498, filed by MCI Telecommunications Corporation, US Sprint Communications Company Limited Partnership, and Competitive Telecommunications Association ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

[4] *Remand granted,* AT&T v. FCC, No. 91-1504 (D.C. Cir. Jan. 21, 1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies Transmittal No. 55

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: January 27, 1992; Released: January 27, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On October 30, 1991, NYNEX filed Transmittal No. 55 to amend the termination liability provisions contained in its special access service tariff. NYNEX offers service discount plans (SDPs) for certain of its voice grade and digital special access services. Although most SDPs are offered to New England Telephone and New York Telephone customers, SDPs for Voice Grade Service, Digital Data Service, and Network Reconfiguration Service are available only to NYT customers. A customer can receive a discount of 10 to 35 percent depending on the duration of the commitment period of the SDP, which can be from 3 to 10 years.

2. A termination liability charge currently applies to customers who prematurely terminate their SDPs. Customers who increase the number and type of services under the SDP or extend their commitment period are exempt from the termination charge. By Transmittal 55, NYNEX includes additional language in the tariff which states that when a "Special Access Service (line)" furnished under an SDP is replaced by a "digital service" provided under a NYNEX exchange service tariff, customers are exempt from termination liability provided: (1) the service is furnished under an intrastate SDP "or similar agreement" with a commitment period at least as long as the commitment period of the terminated SDP; and (2) the digital service provided under the intrastate SDP has a higher bit rate than the service being replaced, or, in the case of NYT customers, the digital service provided under the intrastate SDP is replacing an analog special service.[1]

3. NYNEX furnishes no supporting materials for the revisions, asserting that because it considers the new language to be merely a technical change, no price cap analysis or supporting material is necessary. For the reasons discussed below, we reject Transmittal 55 because of NYNEX's failure to submit a price cap analysis for the transmittal.

II. PLEADINGS

4. On November 15, 1991, Metropolitan Fiber Systems, Inc. (MFS) filed a petition[2] to reject or suspend and investigate Transmittal 55, arguing that the tariff is unsupported and violates Commission policies. MFS Petition at 2-5. It asserts that NYNEX will be able to migrate customers from special access to local exchange services, and across jurisdictional boundaries. It contends that demand and revenue shifts might occur as a result of this filing which would affect the relevant price cap indices and subindices. *Id.*[3]

5. NYNEX counters that its filing is neither a new service nor a restructured service under the price cap rules, but is "merely a minor technical change in the tariff terms which neither enlarges the range of service offerings available to customers, nor involves the rearrangement of existing services." NYNEX Reply at 3. It claims that the tariff already provides that termination liability does not apply when the jurisdiction of a special access service changes from inter- to intra-state, provided the line is furnished under an intra-state SDP. It states that this provides that the termination liability will also not apply when a special access service line is replaced by a digital service provided under the intrastate tariff pursuant to an SDP. This, asserts NYNEX, is only a minor modification to terms that are currently in the tariff. *Id.* at 3-4.

6. NYNEX further contends that termination liability is not a rate element and is not included in the price cap indices. *Id.* at 4-5. It asserts that termination liability is computed based on a portion of the remaining term payments, and is analogous to late payment charges and similar sources of revenue that are not within price cap indices. It argues that, since termination liability was not included in the calculation of any of the indices, the indices will not be affected. *Id.*

III. DISCUSSION

7. Transmittal 55 involves a service restructure, not a mere technical modification to the existing tariff as NYNEX argues. An offering is considered a service restructure if it modifies a method of charging or provisioning a service, or if it introduces a new method of charging or provisioning a service that does not result in a net increase in options available to customers. Carriers can restructure a service by changing an existing method of charging for or provisioning the service, by changing a term or condition, by adding tariff language, or by adding, consolidating, or eliminating rate elements for the service.[4] By asserting that Transmittal 55 is a language

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[1] *See* NYNEX Transmittal No. 55, 1st revised page 7-124.

[2] MFS' petition was filed one day late and was accompanied by a motion to accept its late-filed pleading. That motion was unopposed. Because MFS demonstrated good cause as required by Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, we grant the MFS motion to accept its late-filed pleading.

[3] Because we are rejecting Transmittal 55 for lack of a required price cap analysis, we need not discuss MFS' other arguments.

[4] *See* Section 61.3(cc) of the Commission's Rules, 47 C.F.R. § 61.3(cc). *See also* Second Report and Order, 5 FCC Rcd 6786, 6925 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.*, 6 FCC Rcd 2637 (1991), *petitions for recon. of ONA Part 69 Order pending, petitions for further recon. dismissed*, FCC 91-344, released December 20, 1991, *further modified on recon.* 6 FCC Rcd 4524 (1991) (*ONA Part 69 Order*), *Petitions for recon. of ONA Part 69 Order*

change which modifies existing terms, NYNEX places its tariff revisions squarely within the Commission's description of service restructures. NYNEX has not submitted any of the supporting information required by Section 61.49(f) of the Commission's Rules, 47 C.F.R. § 61.49(f) for a tariff filing that produces a service restructure.[5]

8. Rather than submit this required support information, NYNEX argues that because no price changes are involved in its transmittal, price cap data are unnecessary. Although NYNEX is correct in its assertion that price changes are not included in this tariff, price cap calculations are nonetheless necessary to ensure the indices remain accurate. Carriers filing tariffs under price cap regulation must show what the indices would be if the restructure had been in effect at the beginning of the base year. Price cap indices are weighted according to the demand of each element within the relevant service category or basket. Altering the language exempting certain customers from termination liability charges could affect the migration of customers from inter- to intra-state SDPs, causing changes in demand which will be reflected in the API and the relevant SBI.

9. Furthermore, if NYNEX does not quantify the impact on demand of this restructure in the affected indices, the indices will become increasingly inaccurate with each tariff filing. Each time a restructure is filed, companies under price cap regulation are required to update the values of the relevant API and SBIs that were submitted in the immediately preceding tariff filing.[6] By this iterative process, the indices continuously illustrate the API or SBI that would have been computed if the service restructures had occurred at the beginning of the base year. The accuracy of this methodology depends on the inclusion of each successive tariff filing's impact on demand and revenue, however, since each iteration uses values obtained from the preceding computation.

10. For these reasons, we reject Transmittal 55 as a patent violation of Section 61.49(f) of the Commission's Rules.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that the NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 55 IS REJECTED.

12. IT IS FURTHER ORDERED that the motion to accept the late-filed pleading submitted by Metropolitan Fiber Systems, Inc., IS GRANTED.

13. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 55, filed by Metropolitan Fiber Systems, Inc., IS GRANTED to the extent discussed above and otherwise IS DENIED.

14. IT IS FURTHER ORDERED that NYNEX Telephone Companies SHALL ISSUE revisions to the tariff no later than five business days from the release date of this Order removing the rejected material from its tariff. These revisions shall be scheduled to become effective on one day's notice.

15. IT IS FURTHER ORDERED that Special Permission No. 92-47 IS ASSIGNED and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, ARE WAIVED for the purposes of issuing the above revisions.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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pending, appeal docketed, D.C. PSC v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991).

[5] Each price cap tariff that would restructure existing rates must be accompanied by supporting materials, including the demand (quantity) and revenue (price) data required to adjust each affected actual price index (API) and service band index (SBI). *See* Section 61.49(f) of the Commission's Rules, 47 C.F.R. § 61.49(f).

[6] *See* Sections 61.46(c) and 61.47(d) of the Commission's Rules, 47 C.F.R. §§ 61.46(c), 61.47(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY — AAD 91-21

NEW YORK TELEPHONE COMPANY

Apparent Violations of the Commission's Rules

CONSENT DECREE ORDER

Adopted: January 22, 1992; Released: January 24, 1992

By the Commission:

I. INTRODUCTION

On November 9, 1990, this Commission initiated enforcement proceedings against New England Telephone and Telegraph Company (NET) and New York Telephone Company (NYT) for apparent violations of the Commission's rules in connection with the carriers' transactions with the National Exchange Carrier Association, Inc. (NECA).[1] This Order terminates those proceedings by adopting a consent decree negotiated with the carriers.[2] The decree requires NET and NYT to make payments of $250,000 each for deposit into the United States Treasury.

II. BACKGROUND

A. The Proceedings' Scope

2. The subject proceedings arose from adjustments NET and NYT reported to NECA's common line (CL) pool during December 1988. These adjustments withdrew portions of NET's and NYT's CL costs from that pool and thereby reduced NET's and NYT's shares of that pool below the levels they had earned. NET and NYT recorded these reduced shares in Account 5082, Switched access revenue, rather than in a nonoperating account. In the *Notices*, we tentatively determined that these adjustments were improper and that the carriers' use of Account 5082 to record the adjustments' effects was inconsistent with our accounting rules. We advised NET and NYT that they were each apparently liable for a forfeiture of $250,000 for these accounting violations.[3]

3. In the *Notices*, we also ordered NET and NYT to show cause why they should not be required to take certain actions. First, when we released the *Notices*, it appeared that NET's and NYT's rate of return reports for 1988 reflected these carriers' apparently incorrect accounting practices and, therefore, understated total interstate revenue for that year. We tentatively concluded that NET and NYT should compensate for these apparent understatements by including the understated revenue in their next quarterly rate of return reports, and we ordered NET and NYT to show cause why such action should not be required.[4]

4. Second, in the *Notices*, we tentatively concluded that NET and NYT should have recorded the effects of their December 1988 adjustments in Account 7360, Other nonoperating income, rather than in Account 5082. Based on this tentative conclusion, we ordered NET and NYT to show cause why such accounting should not be required.[5]

B. The Parties' Positions

5. In their responses to the *Notices*, NET and NYT contended that this Commission should not impose the proposed forfeitures or implement the other actions proposed in the *Notices*. NET and NYT argued, in particular, that our show cause proposals against NET and NYT were premised on our belief that they had not reversed their December 1988 adjustments. While acknowledging that this belief reflected their statements prior to the *Notices'* release, NET and NYT asserted that they had inadvertently reversed those adjustments during February 1989.[6] The only other party, Allnet Communication Services, Inc. (Allnet), asserted that NET and NYT "should be subject to the full forfeitures and adjustments proposed" in the *NET* and *NYT Notices*.[7] Allnet argued that it is unclear whether NET's and NYT's rate of return reports for 1988 reflected their February 1989 adjustments, and that we should require NET and NYT to refile those reports to reflect those adjustments.[8]

III. DISCUSSION

6. The proposed consent decree would require NET and NYT to make tax non-deductible payments of $250,000 each for deposit into the United States Treasury. These payments would be excluded from net income calculations for ratemaking purposes and would be recorded in Account 7370, Special charges. The decree would also terminate the subject proceedings, without impeding our

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[1] New England Telephone and Telegraph Co., Notice of Apparent Liability for Forfeiture and Order to Show Cause, 5 FCC Rcd 7170 (1990) (*NET Notice*); New York Telephone Co., Notice of Apparent Liability for Forfeiture and Order to Show Cause, 5 FCC Rcd 7173 (*NYT Notice*).

[2] A copy of the decree is attached to this Order.

[3] *NET Notice*, 5 FCC Rcd at 7171, para. 10, 14; *NYT Notice*, 5 FCC Rcd at 7174, para. 10, 14.

[4] *NET Notice*, 5 FCC Rcd at 7171, para. 12, 16; *NYT Notice*, 5 FCC Rcd at 7174, para. 12, 16.

[5] *NET Notice*, 5 FCC Rcd at 7171, para. 11, 15; *NYT Notice*, 5 FCC Rcd at 7174, para. 11, 15.

[6] NET and NYT stated that they had not reprogrammed their computers to accept the data contained in their December 1988 adjustments, and that the computers consequently reinstated the prior data and reported them to NECA. NET and NYT also stated that they did not discover the reversals until after the *Notices'* release.

[7] Allnet Comments at i.

[8] *Id.* at 13-14.

ability to pursue other matters and without prejudging any complaints we might receive pursuant to Section 208 of the Communications Act.[9]

7. We have reviewed the terms of the proposed decree, which we hereby incorporate into this Order, and evaluated the circumstances of these cases, including those Allnet discusses. We believe that the decree's adoption would resolve the issues in these proceedings in an appropriate manner, while avoiding the delay, expense, and uncertainty of protracted litigation that would likely result regarding whether the carriers violated the Commission's rules. Accordingly, we find in the exercise of our discretion to conduct our proceedings in the manner that "will best conduce to the proper dispatch of business and to the ends of justice,"[10] that adoption of the consent decree will serve the public interest.

8. In adopting the consent decree, we recognize that it does not implement certain measures proposed in the *Notices* or by Allnet. We believe, based on the record before us, that these measures would be contrary to the public interest and are therefore appropriately excluded from the consent decree. As an initial matter, NET and NYT have established that they reversed their December 1988 adjustments during February 1989 and that their rate of return reports for 1988 reflected the effects of these reversals.[11] In these circumstances, we find that NET's and NYT's December 1988 and February 1989 adjustments had no effect on NET's and NYT's rate of return reports for 1988, and that it would be inappropriate to require NET and NYT either to refile that report, as Allnet proposes, or to adjust their next rate of return reports, as the *NET* and *NYT Notices* proposed.[12]

9. Second, while we believe that NET and NYT should have recorded the effects of their December 1988 adjustments in Account 7360, rather than in Account 5082, we believe that implementing our proposals to require such accounting would serve no useful purpose at this time, given that we are not requiring NET and NYT to withdraw their 1989 adjustments.[13] As a matter of equity, if we were to order such accounting, we would also allow NET and NYT to make offsetting entries to record the effects of their 1989 adjustments in Account 7360.[14] We see no reason to elevate form over substance by requiring such accounting at this stage of the proceedings.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), (j) that the subject Consent Decree, incorporated by reference herein, IS HEREBY ADOPTED and that the Secretary shall sign such Consent Decree on behalf of this Commission.

11. IT IS FURTHER ORDERED that the enforcement proceedings this Commission initiated on November 9, 1990, against New England Telephone and Telegraph Company and New York Telephone Company ARE HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

ATTACHMENT

In the Matters of

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY — AAD 91-21

NEW YORK TELEPHONE COMPANY

Apparent Violations of the Commission's Rules

CONSENT DECREE

1. This is a Consent Decree between the Federal Communications Commission (the Commission) and New England Telephone and Telegraph Company (NET), and between the Commission and New York Telephone Company (NYT), terminating enforcement proceedings against NET and NYT (the NYNEX Telephone Companies or NTCs, collectively). The Commission initiated those proceedings on November 9, 1990, through the release of *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the NTCs.[1] Those *Notices* addressed adjustments the NTCs reported to the National Exchange Carrier Association, Inc. (NECA) during December 1988. NET's adjustment withdrew $3.0 million in information origination/termination (IOT) expenses from NECA's

[9] 47 U.S.C. §208.

[10] 47 U.S.C. §154(j).

[11] *See* NET and NYT Reply at 3-4. Although these reversals were inconsistent with NET's and NYT's statements prior to the release of the *Notices*, we are convinced that NET and NYT were not aware of these reversals until after their release. *See* note 6, *supra*.

[12] We also believe that we should not require NET and NYT to withdraw their February 1989 adjustments because those adjustments, although inadvertent, were both timely and appropriate to bring NET and NYT into compliance with Commission rules. *Compare* Pacific Bell, Consent Decree Order, FCC 91-396, slip op. at 3, para. 8 (released Dec. 9, 1991).

[13] *See* note 12, *supra*.

[14] There would be an offset because the entries the carriers would make to account properly for their December 1988 adjustments would be mirrored by entries in the opposite direction to account for the 1989 adjustments. These entries would all be made on current books of account rather than on books of account for 1988 and 1989. Those prior books have been closed.

[1] New England Telephone and Telegraph Co., Notice of Apparent Liability for Forfeiture and Order to Show Cause, 5 FCC Rcd 7170 (1990) (*NET Notice*); New York Telephone Co., Notice of Apparent Liability for Forfeiture and Order to Show Cause, 5 FCC Rcd 7173 (*NYT Notice*).

common line (CL) pool for 1988. NYT's adjustment withdrew $1.5 million in general support facilities (GSF) expenses from that pool.

2. In the *Notices*, the Commission tentatively concluded that NET and NYT had failed to account for the effects of their December 1988 adjustments in the manner prescribed in the Commission's rules. The Commission stated that in December 1988, NET and NYT apparently reported erroneous data to NECA as part of a concerted effort by NET and NYT and other carriers to increase the CL pool's rate of return for 1988. The Commission tentatively concluded that apparent violations of the Commission's Rules had occurred and stated as follows:

a. With respect to NET, the Commission stated that NET's December 1988 adjustment reported data which were inconsistent with data on IOT costs that NET had previously reported to NECA. The Commission also stated that NET violated the Commission's rules when it reported its December 1988 adjustment to NECA, and that the reporting of that adjustment nullified NET's prior attempt to comply with the jurisdictional separations and access charge rules in reporting IOT costs to NECA.

b. With respect to NYT, the Commission stated that NYT's December 1988 adjustment reflected NYT's inclusion of equal access investment in the allocator NYT used to apportion GSF costs among access categories and elements. The Commission also stated that NYT had previously excluded equal access investment from that allocator and reported data to NECA reflecting that exclusion, and that NYT violated the Commission's rules when it modified its GSF allocator to include equal access investment and when it reported adjusted data to NECA based on this erroneous allocator.

c. With respect to NET and NYT, the Commission stated that the December 1988 adjustments decreased NET's and NYT's monthly shares of the revenue from the CL pool below the levels NET and NYT had earned. The Commission also stated that NET and NYT apparently accounted for these decreases by reducing revenue in Account 5082, Switched access revenue, in apparent violation of Sections 32.4099 and 32.5082 of the Commission's Rules,[2] and tentatively concluded that NET and NYT should have recorded these decreases in Account 7360, Other nonoperating income, rather than in a telecommunications revenue account.

d. With respect to NET and NYT, the Commission stated that NET's and NYT's conduct appeared to reflect serious disregard for the integrity of the NECA reporting process and the Commission's accounting rules. The Commission stated further, based on the NTCs' statements that they had not reversed their December 1988 adjustments, that the NTCs' rate of return reports for 1988 apparently reflected the NTCs' incorrect accounting practices and, therefore, understated these carriers' revenues for that year.

3. The *Notices* accordingly ordered NET and NYT to show cause why they should not be required to do the following:

a. Pay forfeitures in the amount of $250,000 each for failure to account for their December 1988 adjustments in the manner prescribed in Sections 32.4999 and 32.5082 of the Commission's Rules;

b. Record the effects of their erroneous reporting in Account 7360; and

c. Adjust their next quarterly rate of return reports to include the understated revenues.

4. NET and NYT filed a consolidated response to the *Notices*. In that response, they stated that their December 1988 adjustments were based on reasonable interpretations of the Commission's rules, and that they had recorded the effects of those adjustments in a manner that they reasonably believed was consistent with Sections 32.4999 and 32.5082 of the Commission's Rules. NET and NYT also stated that they reported their December 1988 adjustments to NECA in a good faith effort to resolve disputes with NECA concerning accounting and ratemaking issues.

5. The NTCs' response stated that the NTCs had reversed their December 1988 adjustments during February 1989 and recorded the effects of these reversals on their 1989 books of account. The NTCs also stated that as a consequence of these reversals, NET's and NYT's December 1988 adjustments were never reflected in their respective 1988 rate of return reports, and that requiring the effects of their December 1988 adjustments to be recorded in Account 7360 would, therefore, produce inaccurate results. The NTCs stated further that these reversals made clear that the NTCs' accounting methods were consistent with Commission's rules, at least for the period after February 1989.

6. The Commission and the NTCs agree that the expeditious resolution of these proceedings in accordance with the terms of this Consent Decree is in the best interests of the public and the NTCs' ratepayers.

7. In consideration of the Commission's agreement to terminate these proceedings on the terms set forth in this Consent Decree, the NTCs agree to pay, without recourse to a trial *de novo* or any other further protest, the amount of $250,000 each, within five days of the date on which the Commission releases an order adopting this Consent Decree.[3] The NTCs agree that no portion of these payments shall be included in net income determinations for ratemaking purposes, and that these payments shall be recorded in Account 7370, Special charges. The NTCs also agree that NET, NYT, and their affiliates will not claim a federal or state income tax deduction for these payments.

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[2] 47 C.F.R. §§32.4099, 32.5082 (1988).

[3] Payment shall be made by checks or money orders drawn to the order of the Federal Communications Commission and shall be for deposit into the General Fund of the United States Treasury. The checks or money orders shall be mailed or delivered to: Federal Communications Commission, P.O. 73482, Chicago, Illinois 60673-7482.

8. In view of the above and in express reliance thereon, the Commission agrees (a) not to require the NTCs to adjust their next rate of return report as proposed in the *Notices*, and (b) to issue an order formally adopting this Consent Decree (the Consent Decree Order) and terminating all proceedings before the Commission arising from the November 9, 1990 *Notices* against NET and NYT, the audit report underlying those *Notices*, NET's December 1988 and February 1989 adjustments regarding IOT costs, and NYT's December 1988 and February 1989 adjustments regarding GSF costs. The Commission further agrees that this Consent Decree serves to resolve all issues now pending or which may be brought against the NTCs before the Commission arising from matters that are the subject of the *Notices* and the underlying audit, other than issues raised in a complaint, if any, filed pursuant to Section 208 of the Communications Act of 1934, as amended. The Commission agrees, in addition, that it will not on its own motion institute against the NTCs new proceedings of any kind arising out of conduct on which those *Notices* and the underlying audit report were based.

9. Agreement by the Commission to this Consent Decree shall constitute a decision to terminate these proceedings without any finding of wrongdoing or liability on the part of the NTCs, or of necessity for sanctions against the NTCs. Moreover, this Consent Decree shall not be interpreted as resolving the issue whether a "knowing and willful" violation of a Commission rule is a prerequisite to imposition of forfeitures under Section 220(d) of the Act. The Commission agrees that the tentative conclusions contained in its *Notices* and the underlying audit report shall not be used against the NTCs or their affiliates in any other current or future proceeding before the Commission. Nothing contained in this Consent Decree shall preclude the Commission from proceeding pursuant to its November 9, 1990 letter to NECA[4] or addressing matters in regard to the requirements of that letter.[5] It is intended and understood by the Commission and the NTCs that this Consent Decree does not constitute an adjudication of any factual or legal issue raised in these proceedings or in the *Notices* and the underlying audit. By virtue of this Consent Decree, the NTCs shall not be precluded or estopped from subsequently litigating any issues, *de novo*, in any other forum, except as expressly provided herein. This Consent Decree and a Consent Decree Order may not be used against any party by any party to this Agreement in any legal proceeding, except as expressly provided herein or as mutually agreed to by the parties to this Agreement.

10. The NTCs admit the jurisdiction of the Commission over them and over the subject matter of these proceedings for the purposes of this Consent Decree and a Consent Decree Order.

11. The NTCs waive any rights they may have to appeal a Consent Decree Order having the provisions described herein and will not engage in conduct inconsistent with the terms of this Consent Decree.

12. The NTCs agree that any violation of a Consent Decree Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

13. The Commission and the NTCs agree that the effectiveness of this Consent Decree is expressly contingent upon termination of these proceedings, issuance of a Consent Decree Order as described herein, and the NTCs' compliance with the terms of this Consent Decree. If the Consent Decree is not signed by the Commission or its authorized agent and by the NTCs, or is otherwise rendered invalid, it shall become null and void and shall not become part of the record in these proceedings.

14. If the Commission or the United States of America on the Commission's behalf brings an action in United States District Court to enforce the terms of a Consent Decree Order or of this Consent Decree, the NTCs agree that they will not contest the validity of either the order or the decree, and will consent to a judgment incorporating the terms of this Consent Decree.

Donna R. Searcy
For the Federal Communications Commission

Saul Fisher
For the NYNEX Telephone Companies

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[4] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990).

[5] *See* Public Notice, Pleading Cycle Established for Comments on Request for Waiver or Modification of NECA Audit Letter, DA 91-642 (May 24, 1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cascade Utilities, Inc.

AT&T Petition for
Declaratory Ruling

Motion for Extension of Time

ORDER

Adopted: January 17, 1992; Released: January 17, 1992

By the Chief, Common Carrier Bureau:

1. On November 15, 1991, American Telephone and Telegraph Company (AT&T) filed a petition for a declaratory ruling that the refusal of Cascade Utilities, Inc. (Cascade) to permit AT&T to use its own facilities and personnel to provide operator services for AT&T's "0+" interLATA traffic violates Sections 201(b) and 203 of the Commissions Act. Comments on AT&T's petition were due January 6, 1992; replies are due January 21, 1992.[1]

2. On January 10, 1992, the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) filed a motion requesting that the Commission extend the time to file reply comments in the proceeding to February 5, 1992.

3. OPASTCO states that Cascade is an OPASTCO member and that the AT&T petition could have serious repercussions for its members that provide operator services. OPASTCO states that the OPASTCO Operator Services Committee has a meeting scheduled during its January 19-23 convention at which the issues raised by the AT&T petition will be discussed. It argues that the discussions planned for the January meeting will permit more effective presentation of small company concerns, the resolution of which will be of great consequence to small rural companies.

4. The Bureau has reviewed OPASTCO's request for extension of time and has determined that good cause has been shown to grant all parties additional time, until February 5, 1992, to file reply comments in the above-captioned proceeding.

5. IT IS THEREFORE ORDERED, that OPASTCO's motion for extension of time IS GRANTED, to the extent specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

[1] *See* Public Notice, 6 FCC Rcd 7038 (Com. Carr. Bur. 1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

IN THE MATTER OF COMMISSION POLICY CONCERNING THE NONCOMMERCIAL NATURE OF EDUCATIONAL BROADCASTING STATIONS

[Reprint excerpted from *Public Notice*, FCC 86-161, 36590, April 11, 1986; 51 FR 21800, June 16, 1986.]

The Commission has become aware of significant uncertainty and controversy concerning various aspects of Commission and statutory policy relating to commercial underwriting on noncommercial stations. As a consequence, we have reviewed the existing policies, focusing on . . . : (1) the broadcast of announcements relating to goods and services for which consideration is received by the station; (2) enhanced underwriting and donor announcements; (3) the offering of program-related materials; . . . .

ANNOUNCEMENTS PROMOTING THE SALE OF GOODS AND SERVICES

Section 399B of the Communications Act of 1934, as amended, and Sections 73.503(d) and 73.621(e) of our rules specifically proscribe the broadcast of announcements by public broadcast stations which promote the sale of goods and services of for-profit entities in return for consideration paid to the station. These rules, however, permit contributors of funds to the station to receive on-air acknowledgments. The Commission has articulated specific guidelines which emphasize the difference between permissible donor and underwriter announcements and commercial advertising. *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 97 FCC 2d 255 (1984) (hereinafter referred to as "1984 Order"); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 90 FCC 2d 895 (1982) (hereinafter referred to as "1982 Order"); *Second Report and Order*, 86 FCC 2d 141 (1981); *First Report and Order and Notice of Proposed Rule Making*, 69 FCC 2d 200 (1978).

Recent cases before the Commission indicate that some noncommercial broadcasters have aired outright commercial messages on behalf of profit making entities in violation of our rules and the statute. (Footnote omitted.) As our actions in those cases attest, we will enforce our prohibition on the broadcast of commercial messages on behalf of profit making entities for which consideration is paid to the station. Information brought to the attention of the Commission regarding such practices will be scrutinized and licensees found to have engaged in them will be sanctioned.

ENHANCED UNDERWRITING AND DONOR ACKNOWLEDGMENTS

Beyond the airing of paid promotional announcements, our recent review of underwriting activities indicates that some public broadcasters may be airing donor and underwriting acknowledgments which exceed the Commission's guidelines. In light of these instances and an ongoing debate in the public broadcasting community on these issues, we believe that a brief statement concerning the obligations of public broadcasters with respect to donor and underwriting acknowledgments is appropriate. In March 1984, we relaxed our noncommercial policy to allow public broadcasters to expand or "enhance" the scope of their donor and underwriter acknowledgments to include (1) logograms or slogans which identify and *do not* promote, (2) location information, (3) value neutral descriptions of a product line or service, and (4) brand and trade names and product of service listings. *1984 Order* at 263. That action was taken as another step in our ongoing effort to strike a reasonable balance between the financial needs of public broadcast stations and their obligation to provide an essentially noncommercial service. It was our view that "enhanced underwriting" would offer significant potential benefits to public broadcasting in terms of attracting additional business support and would thereby improve the financial self-sufficiency of the service without threatening its underlying noncommmercial nature. In this regard, we emphasized that such announcements could not include qualitative or comparative language and that the *Order* should not be construed as allowing advertisements as defined in Section 399B of the Communications Act. *Id.*[1]

We recognized in our *1982 Order* that it may be difficult at times to distinguish between announcements that promote and those that identify. For that reason, we expressly stated that we expect public broadcast licensees to review their donor or underwriter acknowledgments and make reasonable good faith judgments as to whether they identify, rather than promote. *1982 Order* at 911. We saw no purpose at that time, or at the time we adopted our *1984 Order*, in fashioning rigid regulations or guidelines to ensure the noncommercial nature of public broadcasting, and we were concerned that such guidelines would inhibit public broadcasters' ability to seek and obtain the funds needed to present quality programming and to remain financially viable. It continues to be our view that the public broadcaster's good faith judgment must be the key element in meeting Congress' determination that the service should remain free of commercial and commercial-like matter. In response to requests for guidance, however, we will attempt to further clarify the guidelines applicable to public broadcasters' exercise of their discretion.

We reiterate that acknowledgments should be made for identification purposes only and should not promote the contributor's products, services or company. For example, logos or logograms used by corporations and businesses are permitted so long as they do not contain comparative or qualitative descriptions of the donor's products or services. Similarly, company slogans which contain general product-line descriptions are acceptable if not designed to be promotional in nature. Visual depictions of specific products are permissible. We also believe that the inclu-

sion of a telephone number in an acknowledgment announcement is within these general guidelines and, therefore, permissible.

Several examples of announcements that would clearly violate the rule may be helpful:

(A) Announcements containing price information are not permissible. This would include any announcement of interest rate information or other indication of savings or value associated with the product. An example of such an announcement is:

- "7.7% interest rate available now."

(B) Announcements containing a call to action are not permissible. Examples of such announcements are:

- "Stop by our showroom to see a model";

- "Try product X next time you buy oil."

(C) Announcements containing an inducement to buy, sell, rent or lease are not permissible. Examples of such announcements are:

- "Six months' free service";

- "A bonus available this week";

- "Special gift for the first 50 visitors."

Additionally, examples of proscribed product messages can be seen in the instances where the Commission has assessed forfeitures or issued letters or warning for rule violations. (Footnote omitted.)

We repeat that the Commission will continue to rely on the good faith determinations of public broadcasters in interpreting our noncommercialization guidelines. We emphasize, however, that we will review complaints and, in the event of clear abuses of discretion, will implement appropriate sanctions, including monetary forfeitures.

PROGRAM RELATED MATERIALS

We have reviewed the Commission's policies regarding the offering of program-related materials. We have looked carefully at this area because it has come to our attention that such offerings have been used by noncommercial licensees to raise funds for program acquisition purposes, a novel fund raising device.

Our *1982 Order* dealt with the sale of program-related materials. It concluded that because Congress had approved direct promotional fundraising announcements sponsored by nonprofit organizations, public broadcasters could air announcements promoting program-related materials sold by nonprofit organizations, including the station itself. *1982 Order* at 907. It is our belief that in order for the audience to be informed about the sponsor of these offerings, the nonprofit organization sponsoring the offering should be clearly identified in the announcement, a requirement in keeping with the mandate of Section 317 of the Communications Act and Section 73.1212 of our rules.

Guidelines covering announcements for the sale of program-related materials by for-profit entities were not changed by our *1982 Order*. Thus, such announcements are permitted so long as the licensee (1) receives no consideration for the announcement; and (2) the materials are offered on the basis of public interest considerations and not the private economic interests of the offeror; or (3) the price of the materials offered is only nominal. *Second Report and Order*, 86 FCC 2d at 152. As noted above, the nominal price requirement does not apply to offerings sponsored by nonprofit entities.

* * *

Action by the Commission April 10, 1986 (corrected April 24, 1986). Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] Section 399B provides, in pertinent part:

(a) For purposes of this section, the term "advertisement" means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended--

(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;

(2) to express the views of any person with respect to any matter of public importance or interest; or

(3) to support or oppose any candidate for public office.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of:

L.M. COMMUNICATIONS, INC. — File Nos. BR-890403WX, BRH-890403WY

For Renewal of Licenses of Stations WLXG/WCOZ(FM), Lexington, and Paris, Kentucky

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1991; Released: January 27, 1992

By the Commission:

1. The Commission has before it: (i) a Petition to Deny filed July 3, 1989, by the Kentucky State Conference of Branches of the NAACP, the respective branch of the NAACP operating within the service area of the radio stations, and the National Black Media Coalition against the license renewal applications for stations WLXG/WCOZ(FM), Lexington, Kentucky filed on April 3, 1989 by L.M. Communications, Inc. (licensee) (NAACP/NBMC);[1] (ii) an opposition to the petition to deny filed by the licensee; and (iii) the licensee's response to a Commission letter of inquiry. NAACP/NBMC allege that the challenged stations violated the Commission's EEO Rule. Accordingly, they request that we investigate the stations' employment practices and designate the renewal applications for hearing.

2. **PROCEDURAL MATTERS.** In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit, "specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent with (the public interest, convenience and necessity)." 47 U.S.C. Section 309(d)(1); *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*); *Dubuque Limited Partnership*, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

3. NAACP filed a timely declaration from Jesse Crenshaw, President of the Lexington Branch of the NAACP. Accordingly, NAACP will be considered as a petitioner against this station. With respect to NBMC, NBMC timely submitted a statement from Pluria Marshall, Chairman of the NBMC and a resident of the Washington, D.C. metropolitan area. However, the Commission has previously held that a statement of a person who does not claim to be a listener of the stations nor a resident of the service area of the challenged stations, does not satisfy the requirements of the Act. *See Michigan/Ohio Broadcast Renewal*, 3 FCC Rcd 6944 (1988); *see also KDEN Broadcasting Co.*, 55 Rad. Reg. 2d (P&F) 1311, 1311-1312 (1984). Accordingly, we hold that NBMC lacks standing to petition against the stations in question and, therefore, will be treated as an informal objector.

4. **DISCUSSION.** Section 73.2080 of the Commission's Rules, 47 C.F.R. Section 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ, and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. *See* Section 73.2080 (b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080 (b), 73.2080 (c).

5. When a renewal application indicates a record of adequate EEO efforts, the application is granted, if otherwise appropriate. If the application indicates a record of inadequate EEO efforts, the Commission will impose a variety of sanctions and remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the renewal application for a hearing if the facts so warrant. *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987) (*Broadcast EEO Report and Order*), *petition for reconsideration pending, see* 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters). *See also Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC*, 854 F.2d 501 (D.C. Cir. 1988) (*Beaumont*); *Bilingual-Bicultural Coalition, supra*.

6. Review of the licensee's EEO record leads us to conclude that NAACP/NBMC have presented a *prima facie* case demonstrating that unconditional grant of the applications for renewal would have been inconsistent with the public interest. *Astroline, supra*. The stations' own record evidenced inadequate efforts.[2] Further inquiry was, therefore, necessary. *See Beaumont Branch of the NAACP v. FCC, supra*.; *Bilingual-Bicultural, supra*. Upon analysis of the licensees' opposition and response to our inquiry, we conclude that no substantial and material questions of fact remain as to whether the licensee discriminated. *Astroline, supra*. Accordingly, designation for a hearing is not warranted for the renewal applications. We will, however, impose sanctions and/or prospective remedies as detailed herein.

7. A description of the licensee's EEO efforts is detailed in the stations' 1989 EEO Program Report, their opposition and their response to our inquiry letter. During the period from March 1, 1986 to February 28, 1989, the licensee had 50 overall hiring opportunities, including 48 upper-level hiring opportunities, for full-time employees. The licensee used recruitment sources for 43 positions. The licensee used the following referral sources for 39 positions: University of Kentucky; Urban League Employment Program (two minorities); Kentucky Department of Employment Services; Transylvania University; Alternatives for Women; Women's Neighborly Organization; Bluegrass Community Services; and Women Inc. Feminist

Center. In addition, the licensee's record indicates that it used the NAACP for 31 full-time positions; *Lexington Herald Leader* for 18 positions; *Broadcasting* for four positions; and on-air announcements for 13 positions.[3] The licensee interviewed a minority for six of the 50 openings. The licensee's inquiry response indicates that no minorities were hired for the 50 full-time positions filled during the period March 1, 1986[4] to February 28, 1989.[5] However, in its opposition, the licensee states that it hired a Black male salesperson and a Black male sales manager in September and October 1985 respectively. These employees, however, did not remain at the stations long enough to be included in the stations' annual employment reports. The licensee also states that it made two offers of employment for upper-level positions to Black candidates in 1988 who did not accept the offers. In addition, the licensee states that it hired a Black male News Director in August 1989 – within one month after the license term expired.[6] Furthermore, the licensee indicates that in March 1989, it added *Bourbon County Citizen*, the Lexington, Kentucky Mayor's Office of Employment and Training, *Bourbon Times*, and the Lexington Branch of the NAACP to their list. The licensee states that the two newspapers have a substantial minority circulation and that the Mayor's office emphasizes employment and training of minorities and women. In addition, the stations maintained adequate records for self-assessment.

8. NAACP/NBMC assert that WLXG/WCOZ(FM) did nothing to correct its failure to obtain a sufficient number of minority employees during the license term. NAACP/NBMC contend that only the daily newspaper and one minority organization accounted for minority candidates during the renewal period. The licensee counterargues that its EEO program complied with the Commission's EEO Rule. The licensee asserts that it sends to its recruitment sources notices of job openings and information about each specific opening prepared for posting. The licensee also asserts that it has interviewed every minority candidate referred during the license term. The licensee attributes its inability to obtain minority employees to the low number of minorities available in the Lexington, Kentucky MSA, coupled with the small size of the stations, and competition with larger stations. The licensee argues that, nevertheless, it has made concerted efforts to attract minorities from other markets. The licensee indicates that, in 1988, it began advertising job openings in *Broadcasting Magazine*. In addition, in 1987 and 1988, the stations' general manager spent significant time canvassing other Kentucky radio stations for job applicants. Although these efforts produced applicants, they failed to turn up minority applicants. Regarding NAACP/NBMC's criticism that the stations only used one minority referral source, the licensee states that it notified NAACP of various positions. It, however, had difficulty locating a branch of the NAACP which would provide referrals.[7]

9. Upon analysis of the licensee's opposition and inquiry response, we conclude that no substantial and material questions of fact remain to be resolved. *Astroline, supra*. In addition, our review of the licensee's EEO program does not reveal any evidence of discrimination. Accordingly, designation for a hearing is not warranted. However, although we find that grant of its renewal applications will serve the public interest, we have noted areas of the program which can be improved. Specifically, we admonish the licensee to assess its EEO program on a more regular basis and to modify its use of sources as needed to obtain a more diverse pool of referrals for job openings. Such modification is needed particularly where sources used are repeatedly unproductive. In this regard, we note that it was not until a month prior to filing the renewal applications that the licensee added sources such as *Bourbon County Citizen* and *Bourbon Times* which had not been used previously.[8]

10. Nonetheless, this case appears less egregious than those cases in which we have imposed reporting conditions. *See e.g., Applications of Certain Broadcast Stations Serving Communities in Michigan and Ohio*, 3 FCC Rcd 6944 (1988); *Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd 4893 (1990) (*WQAM/WKIS (FM)*). In those cases, we imposed reporting conditions where stations failed to maintain adequate records for self-assessment. However, no such sanction is warranted in the instant case because the licensee did maintain adequate records. Moreover, the licensee's overall efforts here are significantly better than those cases where reporting conditions were imposed for deficient efforts. *See e.g., Applications for [R] enewal of License of Certain Broadcast Stations Serving Melbourne, Florida & Other Communities in the Florida Area*, 5 FCC Rcd 6738 (1990) (WPAP-FM and WCOA(AM)/WJLQ-FM).

11. Accordingly, IT IS ORDERED that the petition to deny filed by the NAACP IS DENIED.

12. IT IS FURTHER ORDERED that the informal objection filed by the National Black Media Coalition IS DENIED.

13. IT IS FURTHER ORDERED that the license renewal applications filed by L.M. Communications, Inc. for WLXG/WCOZ(FM), Lexington, Kentucky ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] In their petition, NAACP/NBMC also challenged the renewal applications of WAXU/WTKT(FM), Georgetown, KY (formerly WBBE/WMGB-FM), (File Nos. BR-890331XY and BRH-890331XZ) filed by Maycourt Company on March 17, 1989; WFIA/WZKS(FM) (formerly WXLN(FM)) Louisville, KY (File Nos. BR-890303UB and BRH-890303UA) filed by Radio 900, Inc. (former licensee) on March 3, 1989; WQKS/WZZF-FM, Hopkinsville, KY (File Nos. BR-890317UH and BRH-890317UF) filed by Pennyrile Broadcasting Company on March 17, 1989. In addition, NAACP/NBMC challenged the applications for assignment of WFIA/WXLN(FM) (File Nos. BTC-890512HP and BTCH-890512HQ) from Radio 900, Inc. to Jim Kincir.

NAACP/NBMC withdrew their challenge against WAXU/WTKT(FM) pursuant to a settlement agreement. The Commission subsequently granted the licensee's renewal applications subject to reporting conditions and a $18,000 forfeiture by letter dated November 29, 1989. *See Applications for Renewal of License of Stations WBBE(AM)/WMGB-FM, Georgetown, KY, Letter*, 4 FCC Rcd 8255 (1989). NAACP/NBMC also

withdrew their challenge against stations WQKS/WZZF-FM on May 24, 1990 and the Commission granted these stations' renewal applications on July 12, 1990. In addition, NAACP/NBMC withdrew petitions challenging assignment applications for WFIA/WXLN(FM) and the Commission granted these stations' renewal applications on February 14, 1990.

[2] The stations were not challenged regarding their recruitment of women. Nonetheless, as is our practice in all cases, we reviewed the stations' EEO efforts toward both women and minorities. We find the stations' record of recruiting women sufficient.

[3] The licensee relied upon on-air announcements as the only referral source for four of the 43 positions for which it used recruitment sources. The licensee did not use any referral sources for seven out of 50 full-time positions filled during the subject period.

[4] The licensee acquired the AM station on October 5, 1985. The 1985 report, therefore, consists of the employment profile of only WCOZ(FM).

[5] The Lexington, Kentucky PMSA, in which the stations are located, has an available labor force which is 10.5% minority (9.2% Black, 0.6% Hispanic, 0.6% Asian/Pacific Islander, 0.1% American Indian). The stations' 1989 Annual Employment Report lists no minorities among 15 full-time overall and upper-level employees. The 1988 report lists no minorities among 17 overall employees. The 1987 report lists no minorities among 14 overall employees. The 1986 report lists one (5.6%) Black among 19 overall employees and one (5.6%) Black among 18 upper-level employees. The 1985 report lists no minorities among 12 full-time employees.

[6] Because this hire apparently occurred after August 1, 1989, it is a post-term hire and generally would not be considered as part of the licensee's efforts during the license term. However, the licensee indicates that it began recruiting for this position in February 1989. The position was offered to and rejected by a Black male applicant in March 1989. In March 1989, the licensee re-posted this position and eventually hired a Black male to fill the position in August 1989. Thus, this hire is an apparent outgrowth of the licensee's license term program and efforts. *See Rust Communications Group, Inc.*, 73 FCC 2d 39 (1979).

[7] The licensee alleges in its opposition that shortly after it acquired the stations, it began sending notices of job openings to the NAACP's national office in Washington, D.C. This office did not refer any minority candidates and upon contacting the NAACP, the licensee's general manager was informed that there was an office in Lexington, Kentucky. Accordingly, the licensee began sending job notices to this branch, but to no avail. The Lexington office became inactive in 1988. The general manager then began sending job notices to the Louisville branch, also to no avail. The licensee indicates that shortly before filing its renewal applications, it received the name and address of an individual associated with the Lexington branch of the NAACP. The licensee has added the name of this individual to its recruitment list.

[8] The stations used *Broadcasting* for one full-time position May 1986. They apparently stopped using this source in June 1986. They did not send any more notices to *Broadcasting* until June 1988 and then discontinued using this source as of October 1988. The stations used the *Lexington Herald Leader* for 18 positions. The newspaper was used for five positions in May 1986 and then was not used again until October 1986. It was used regularly for full-time positions until September 1987 and re-added to the list in February 1988. It was once again dropped as a source in October 1988. WLXG/WCOZ(FM) was used as a source during July 1986. It was used as a source again in December 1987 until January 1988. It was used again during October 1988. Other than these modifications, it appears that the stations used the same recruitment sources througout the subject period.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-243

In re Application of

WEINER BROADCASTING COMPANY — File No. BPIB-840904MZ

For a Construction Permit for a
New International Broadcast Station
at Monticello, Maine

Appearances

Michael Couzens, on behalf of Weiner Broadcasting Company; and *Robert A. Zauner*, on behalf of the Chief, Mass Media Bureau.

DECISION

Adopted: January 17, 1992; Released: January 29, 1992

By the Review Board: BLUMENTHAL, ESBENSEN and GREENE.

Board Member BLUMENTHAL.

1. The Board has before it the *Initial Decision*, 6 FCC Rcd 4337 (1991)(*I.D.*), of Administrative Law Judge Joseph Chachkin (ALJ) in the above-captioned case. It also has the Exceptions of Weiner Broadcasting Company (WBC or Weiner) and the Reply of the Commission's Mass Media Bureau. The *I.D.* denied the WBC application.

BACKGROUND

2. Filed in 1984, this application was not designated for hearing until May, 1990 because of the prior and subsequent conduct of WBC principal, Allen H. Weiner. In brief and in paramount part, the *Hearing Designation Order*, 5 FCC Rcd 2894 (1990), specified issues to determine whether Weiner had operated an AM radio broadcast station (at night) without a license from 1982 to 1984; to determine whether Weiner had violated the Commission's rules by broadcasting from Yonkers, N.Y., on only a Remote Pickup Base Station, directly to the general public in 1984; and to determine whether Weiner had operated an unlicensed radio broadcast station from an erstwhile fishing vessel anchored in Long Island Sound in 1987.[1]

INITIAL DECISION

3. Among other things, the ALJ recorded that WBC had acquired the licenses for WOZI-FM, Presque Isle, Maine in 1980 and of WOZW-AM, Monticello, Maine in 1981. Although the AM station was licensed for daytime-only operation on 710 kHz, WBC began in January 1982 to broadcast without a license on 1616 kHz as "*Pirate Radio North*" (using unassigned call letters "KPRC"), an unauthorized signal it simulcast on 6.2 MHz and 16.2 MHz. The illicit practice continued until 1984. *I.D.*, paras. 16-18. As the ALJ reports (*id.*, at para. 19):

> Weiner offered no excuse for his unlicensed operation on the 1616 kHz, 6.2 MHz and 16.2 MHz frequencies. He now claims that his activities were stupid and a mistake. He says that at the time he felt it was exciting to put a signal on the air at night on a clear channel and talk to people at great distances.

In May 1985, the Maine broadcast licenses were designated for revocation hearing; but on April 24, 1986 WBC was permitted to sell the two Maine broadcast facilities under the Commission's Minority Distress Sale Policy. *Id.*, para. 38.

4. In addition to those transgressions, WBC had, in April 1984, acquired a license for a Remote Pickup Base Station at Yonkers, N.Y. Heedless of the prohibitions of Part 74 of the Commission's Rules against the use of such equipment for broadcasting to the general public, WBC operated improperly at various times from August to November of that year. *I.D.*, paras. 30-33. When Weiner's progations were discovered, he was ordered on November 29, 1984 by the FCC's Mass Media Bureau to cease operation of the Yonkers station. Although WBC advised the FCC by letter of February 20, 1985, that it would come into compliance with Part 74, it recommenced its violations in March 1985, an action Weiner testified was "another grave mistake on my part." *See I.D.*, paras. 34-37.

5. While marketing away his Maine AM and FM broadcast licenses in early 1986 (and his Yonkers Remote Pickup Base Station licenses along therewith), Weiner was simultaneously acquiring the fishing vessel *Sarah*, *id.*, para. 42, which he registered in Honduras, and had then towed to a point in Long Island Sound 4.5 miles off of Long Beach, N.Y. From there, and (*id.*, at para. 45):

> |o|n July 23, 24, 26 and 27, 1987, from 6:00 p.m. to midnight, Weiner caused transmissions to emanate from the *Sarah* on 1620 kHz with 1,000 watts of power, on 103.1 MHz with 1,000 watts power, on 6,240 kHz with 300 watts of power and on 190 kHz with 75 watts of power. The radio emissions from the *Sarah* were identified as being broadcast by "Radio New York International" (RNI). On July 23, 24, 26 and 27, 1987, neither Weiner, nor WBC, nor RNI, nor any person or entity associated with the broadcasts, held any license, permit or any other authorization to operate a radio station on 1620 kHz, 103.1 MHz, 6.240 kHz or 190 kHz.

On July 28, 1987, the *Sarah* was captured by the Coast Guard cutter *Cape Horn*, whereafter Weiner and his confederates were charged with violations of federal and international law. Criminal charges were deferred, however, upon Weiner's agreement not to resume the seaborne

broadcasts. *Id.*, paras. 46-50. Nevertheless, and trumpeting in an April 1988 magazine article that he would resume broadcasting from the *Sarah* "as soon as the warm weather arrives," Weiner sought to make good on his boast by repairing the ship's radio transmitting equipment (and generator), registering the craft with the "Principality of Sealand,"[2] and causing the ship to be towed to its prior anchorage. *Id.*, paras. 51-52. In August 1988, the local United States Attorney's office instituted an action to secure a Temporary Restraining Order against Weiner, but it settled once more for another agreement whereby Weiner promised not to:

> "broadcast from on board the *Sarah*, or any other vessel, either within or without the national territorial waters, pending a decision by the United States District Court on Plaintiff's Motion for Preliminary Injunction."

Id., at para. 54 (quoting agreement). Weiner similarly averred (*id.*):

> that he would "not broadcast from the *Sarah* under any circumstances until [his] alleged right to broadcast is decided by the Court." Weiner also agreed, "as a matter of fairness" to use his "best efforts to see that no other persons -- be they defendants in this action or not -- broadcast from the *Sarah* until permitted to do so by the Court."

6. Notwithstanding that newest pledge, and in October 1988, the incorrigible Weiner engaged in the bogus transfer of the *Sarah* to a British "front" corporation he had helped conjure (with the express purpose of evading his agreement with the United States Attorney), and the renegade station recommenced its operations that very month. *Id.*, paras. 55-58. On October 17, 1988, United States District Court Judge John J. McNaught promulgated a Temporary Restraining Order (which shortly ripened into a Permanent Injunction), served upon the vessel by the Coast Guard. The ALJ writes (*id.*, at para. 58):

> When confronted with the fact that the [August 1988] agreement also called for Weiner to use his best efforts to see that no other person broadcast from the *Sarah*, Weiner responded: "Yeah, the second part, I guess I really didn't read that letter too carefully." Tr. 109. Weiner also was unable to distinguish between personally broadcasting from aboard the *Sarah* and having his friends do so at his direction. Tr. 112. Weiner admitted that his agreement to discontinue unlicensed broadcasts was "disingenuous" in light of his subsequent actions. Tr. 111-112. Weiner made clear that his motive for entering into the agreement with the United States Attorney, which he did not intend to honor, was to get the ship out of port.

EXCEPTIONS

7. WBC concedes that "the *I.D.*, where it elaborates the designated issues, paras. 15 through 50 inclusive, are not controverted in this appeal."[3] These findings embrace the unlicensed operation of the Maine AM station, the improper operation of the Remote Pickup Base Station, and many of the unsanctioned broadcasts from Long Island Sound aboard the *Sarah*. WBC contends, however, that the "*I.D.* adduced findings, at paras. 7-14 and 50-60 . . . are not within the express scope of any of the designated issues."[4]

8. Instead, WBC posits in its defense (1) that Weiner has never been convicted of a felony, and may not therefore be considered unqualified under the Commission's *Character Policy Statement*, 102 FCC 2d 1179 (1986), as *modified*, 5 FCC Rcd 3252 (1990); (2) that Weiner's offshore broadcasts did not violate 47 U.S.C. § 301, and that even if Weiner violated Article 30, Section 1 (1), Paragraph 2665, of the Radio Regulations of the International Telecommunications Union of the United Nations (ITU Radio Regulations), Weiner has never been "convicted" of these offenses which, at most he claims, are susceptable to a small fine under 47 U.S.C. § 502[5]; and lastly (3) that Weiner's candor and recent epiphany do not, under Commission precedent, warrant disqualification.

DISCUSSION

9. WBC, willfully or ignorantly, misreads the Commission's *Character Policy Statement*, whereunder the pertinent inquiry is whether the (admitted) violations of the Communications Act and FCC rules portend that the applicant cannot be relied upon for future compliance. 102 FCC 2d at 1209. The *Policy Statement's* elaborate, though subsequently modified, disquisition upon criminal convictions relates solely to " *non* -FCC misconduct," *see id.*, 1204-08, and WBC admits to violations of the Communications Act and FCC rules, including Part 2.100 *et seq.*, 47 CFR § 2.100 *et seq.* (incorporating ITU Radio Regulations).

10. We further apprehend that the cases cited by WBC in its quest for leniency are not controlling.[6] In *First Baptist Church*, 6 FCC 771 (1939), a border congregation sought and received an FCC dispensation to convey its religious services via phone line to station CKLW, Windsor, Ontario, after having previously done so in a possible, though unwitting, violation of 47 U.S.C. § 325. By contrast, WBC's violations were purposeful and plentiful. *Central Broadcasting Co.*, 11 FCC 259 (1946), involved the qualifications of an individual (John H. Stenger, Jr.), who had lost control of a Wilkes Barre, Pa. station (indeed he was *enjoined* by a local Common Pleas Court from *reclaiming* control), but reacquired grasp of the operation in 1940. Thereafter, he restored the beleaguered facility to solvency, and ran it perfectly until 1944. *See id.*, at 271-274. We have here no such admirable record. Equally distinguishable are *Front Range Educational Media Corp.*, 43 RR 2d 185 (1978) and *A & A Ready Mixed Concrete, Inc.*, 44 RR 2d 1260 (Rev. Bd. 1978). In the former, the Commission licensed an educational applicant whose president, in addition to violating the "spirit" of CPB funding regulations (for which CPB took no action and continued its funding), gratuitously admitted to several violations of the FCC's operating rules for approximately six months, because the struggling station had relied upon untrained community volunteers. In the latter, a mixed concrete company, which had previously held business licenses for many uneventful years, operated for 12 days without a license in the Industrial Radio Service, but terminated transmission on its new equipment directly upon learning that no FCC license had issued yet for the new equipment, despite the "view" of its equipment sup-

plier that the FCC had acted promptly and issued the licenses. None of these cases involve the brilliant pattern of contumacy reflected in the conduct of Weiner and WBC.[7]

11. We do declare that, even when an applicant has previously committed the most atrocious infractions, the Commission has permitted a showing of rehabilitation. In *L.D.S. Enterprises, Inc.*, 86 FCC 2d 283 (1981), the agency was presented with an application to acquire a broadcast license from a party who, half a decade earlier, had lost five commercial broadcast licenses for perhaps the most amoral skein of detected villany in domestic broadcast history.[8] The Commission did not reject summarily that application, but invited an exhibit of palingenesis in a "paper" hearing. *Id.*, at 286.[9] *See also Big Country Communications*, 5 FCC Rcd 6013 (1990) (interpreting *Character Policy Statement).* At the instant hearing, Weiner proffered as follows (*I.D.*, at para. 61)[10]:

> In support of WBC's application, Weiner submits a statement from William C. Miller, Manager, TOC Maintenance, for ABC Broadcast Operations & Engineering. Miller states that Weiner was first hired by ABC on May 14, 1988, as a temporary employee and then, after being let go by ABC was again rehired as a temporary employee on April 1, 1989. On April 28, 1989, Weiner was made a regular employee of ABC. According to Miller, who has been Weiner's supervisor during the entire course of Weiner's employment at ABC, Weiner is a "stable, reliable worker and is quite gifted technically."

And, at the time of the hearing, Weiner was also employed (apparently as an air personality) by WWCR, a licensed international station broadcasting from Knoxville, Tn. *I.D.*, n.5. Finally, WBC maintains that Weiner's reliability is assured because he remains under the onus of District Judge McNaught's Permanent Injunction, which broadly proscribes unlicensed operation by Weiner.[11]

12. The record on Weiner's plaint of metempsychosis is insufficient, at this juncture, to overcome his history. In *L.D.S. Enterprises*, for example, five years had elapsed since the applicant had last been denied a license; there was, thereafter, no evidence of federal violations, and still the Commission did not move to grant straight away. The same was true in *Big Country Communications*, where ten years had passed. Here, we remain in the initial process of adjudicating Weiner's alleged violations, albeit he has lately confessed of (most of) his misdeeds. But Weiner has been under the enforcement eye of this Commission since 1984, under the eye of the U.S. courts since 1987-1988, and in this hearing since May 1990. Adhering generally to the evidentiary principle that salutory conduct *post litem motem* is not entitled to very great weight, the Board finds it premature to predict Weiner's permanent adhesion to regulatory rectitude. He is little abetted by his invocation of the Permanent Injunction currently levied against him, as this would seem to neutralize any compelling inference that his most recent conduct is fairly representative of his volitive "propensity for complying with our rules and policies," the divining rod provided for use here. *Character Policy Statement*, 102 FCC 2d at 1231.

CONCLUSION

13. On the evidence before us, and the tedious pathology it irradiates, it looks that Weiner cannot decide whether he is Hook or Peter Pan, but we have absorbed from Mr. Barrie's *fabliau* to "never smile at a crocodile." In each instance of record in which Weiner has been entrusted with a powerful transmitting license, he has disregarded its limitations. When vacant of official license, he has scoffed at federal and international law, and, on successive occasions, his own solemn oaths of redemption. Though we respect the recent assessment of his ABC supervisor, we agree with the Mass Media Bureau and discern no persuasive proof of enduring rehabilitation nor apposite precedent for the grant, *ex continenti*, of the particular license under application. Should a "decent interval" ensue without notable delict, Weiner is not estopped from applying again. *L.D.S Enterprises*, *supra*; *Central Broadcasting Co.*, *supra* ; *Big Country Communications*, *supra*. Should it not, we would rather assume criminal prosecution within the the muscular clutch of serious law.

14. ACCORDINGLY, IT IS ORDERED, That the application of Weiner Broadcasting Company (File No. BPIB-840904MZ) for a Construction Permit for a new International Broadcast Station at Monticello, Maine IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] The full scope of issues designated follows:

> (a) To determine whether Weiner operated a radio station on 1616 kHz in Monticello, Maine, at various times from January 31, 1982, through July 16, 1984, without a Commission authorization, in violation of Section 301 of the Communications Act of 1934, as amended;
>
> (b) To determine whether Weiner and/or WBC refused to allow an inspection of Station WOZW(AM), Monticello, Maine, on May 3, 1984, by an authorized representative, in violation of Section 73.1225 of the Commission's Rules;
>
> (c) To determine whether Weiner and or WBC failed to comply with the then prevailing main studio location requirements of Section 73.1125 of the Commission's Rules.
>
> (d) To determine whether Weiner and/or WBC operated Remote Pickup Base Station KPF-941, Yonkers, New York, to broadcast directly to the public on 1622 kHz, in violation of the permitted uses for remote pickup base stations as stated in then-prevailing provisions of Section 74.431(e), 74.43(g), 74.432(c)(2), 74.432(c)(5), and 74.432(g), of the Commission's Rules.
>
> (e) To determine whether Weiner and/or WBC misrepresented to the Commission that the transmitter to be used for Remote Pickup Station KPF-941, Yonkers, New York, would comply with the then-prevailing type acceptance criteria of Section 74.451(a) of the Commission's Rules.

(f) To determine whether Weiner, from on or about July 23, 1987, to on or about July 28, 1987, aboard a vessel in international waters and without a license engaged in operating broadcast stations the transmissions of whic were received in the United States in violation of Article 30, Section 1(1), Section 2665, of the Radio Regulations of the International Telecommunications Union of the United Nations.

(g) To determine, based on the evidence adduced pursuant to the foregoing issues, whether Weiner and/or WBC possess(es) the requisite character qualifications to be a Commission licensee;

(h) To determine, based on the evidence adduced pursuant to the foregoing issues, whether the application should be granted.

We do not here address Issues (b) and (c), not because these are unimportant, but because these are surely not decisional in this case. *See* 47 CFR § 1.277(a).

[2] The *I.D.* informs *in extensio* (at paras. 51-52):

> The "Principality of Sealand" is a small former British gunnery platform located off the coast of England. Tr. 112. Built in the early part of 1942, its purpose was to defend the Thames Estuary against German attacks on shipping lanes. In 1967, a group directed by Roy Bates, a United Kingdom citizen, established themselves on the fort to run an illegal radio station. Subsequently, Bates declared the fort to be a sovereign principality with himself and his wife as titular heads. MM Ex. 19. Sealand agreed to register the *Sarah* in exchange for free advertising time. Tr. 112-113.
>
> * * *
>
> The United Kingdom does not recognize Sealand as a sovereign nation and has never abandoned title to the fort. The territorial Sea Act of 1987, extended the United Kingdom's territorial jurisdiction to encompass the fort. The United Kingdom does not recognize the right of Sealand to register ships. MM Ex. 19. The United States also does not recognize Sealand registry of vessels. MM Ex. 20. Prior to registering the *Sarah* with Sealand, Weiner made no investigation to determine whether the United States recognized Sealand's registry of vessels. Tr. 115.

[3] WBC Exceptions at 1.

[4] *Id.*, at 2. Paragraphs 7-14 of the *I.D.* narrate Weiner's activities in the early 1970's when Weiner was a teenager. Paragraphs 50-60 of the *I.D.* narrate activities of the *Sarah* occurring after August 1988. WBC does not dispute any of the factual findings; its argument here is wholly procedural. We will disregard the findings, and the conclusions based thereon, stemming from the matter set out in paras. 7-14. *See Character Policy Statement*, *infra*, 102 FCC 2d at 1229 (violations more than 10 years old not considered); *cf. Tri-State Communications*, 5 FCC Rcd 1156, 1171-72 (Rev. Bd. 1989)(subsequent history omitted). As to the matter discussed in paras. 50-60, we note that WBC does not dispute the facts or deny Weiner's testimony. To the extent that Weiner here seeks to argue his reliability and contrition, we find his testimony relevant, *especially* if we accept WBC's argument that the record should focus on violations only up to August 1988. His own testimony about his conduct *thereafter* certainly then bears on his pleas for leniency.

[5] Section 502 of the Communications Act reads (emphasis added):

> Any person who willfully and knowingly violates any rule, regulation, restriction, or condiction made or imposed by the Commission under authority of this Act, or any rule, regulation, restriction, *or condition made or imposed by an international radio or wire communications treaty or convention, or regulations annexed thereto*, to which the United States is or may hereafter become a party, shall, *in addition to any other penalties provided by law*, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs.

The forfeiture plainly is not exclusive.

[6] Only in passing do we touch WBC's reference to *KQED, Inc.*, 5 FCC Rcd 1784 (1990)(subsequent history omitted), and his assertion that his "loss" of the Maine Broadcast stations is a "heavy price" already paid. Weiner did not "lose" those stations to an FCC revocation: he elected to switch rather than fight, *sell* the stations, and *purchase* a "pirate" vessel. WBC's identification with KQED (Exceptions at 9. n.9) is a measure of its distance from an appreciation of law and ordinary concepts of equity. *See also id.*, at n.1 (WBC observes that "1622 kHz. is not allotted for AM transmission . . . . [and the] vehemence of the Commission's condemnation . . . appears to correlate with its discomfiture" at not having allocated this particular channel to conventional broadcasting).

[7] The Board is keenly cognizant that the Commission may not be arbitrary in its treatment of applicants with a tarnished past. *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)(producers of rigged network game shows treated differently from network). But *Melody Music* is not on point, since that applicant's prior conduct involved no violation whatever of law or established policy; and the other cases relied upon by WBC contain no glaring pattern of persistent misconduct of the magnitude admitted by Weiner.

[8] *Star Stations of Indiana, Inc.*, 51 FCC 2d 97 (1975), *aff'd per judgment*, 527 F.2d 853 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 992 (1976).

[9] The trail of *L.D.S. Enterprises* appears to go cold after that 1981 opportunity was afforded, and there is no record that its principal (Don W. Burden) was ever permitted to control another broadcast license.

[10] The *I.D.* (at para. 61) also reports:

> Weiner also submits a statement from Thomas S. Kneitel, Editor of *Popular Communications*, which publishes dates and times when pirate radio stations throughout the world can be picked up and received. Tr. 136. Weiner is a subscriber to the magazine. Tr. 126. Kneitel states that he has known Weiner professionally and personally for several years and that he has found Weiner "to be a thoroughly responsible and upstanding member of the community, and a person of excellent character." Kneitel believes that "Weiner would be a credit to the broadcasting community and to the Federal Communications Commission."

We are uncertain that Kneitel's fulsome endorsement is entitled to much heft, considering his apparent boostering to "pirate radio stations." *See also id.*, para. 50. We also note that, while Weiner relies upon his ABC record as evidence of rehabilitation, it was *after* he started at the network (i.e., May 14, 1988) that his chicanery recommenced. *See supra* paras. 5-6. In any event, we affirm the *I.D.'s* denial for the reasons explained in our text.

[11] WBC Exceptions at 10. Of course, the Commission has *volumes* of rules, regulations and exotic policies above and beyond the bare requirement of a transmitting license.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-150

In re Applications of

FRANK DIGESU, SR.	File No. BPH-880126ME
VIRGINIA GRIFFITH	File No. BPH-880127MN
LINDA L. ALT	File No. BPH-880128MO
KPI COMMUNICATIONS, INC.	File No. BPH-880128MW

For Construction Permit for
New FM Station, Channel 231A,
Meridianville, Alabama

Appearances

Spencer W. Weisbroth, Esq., and *Donald E. Martin, Esq.*, on behalf of Frank Digesu, Sr.; *Harry Martin, Esq.*, on behalf of Virginia Griffith; *Richard J. Bodorff, Esq.*, and *Kenneth Ebanks, Esq.*, on behalf of Linda L. Alt; *Daniel F. Van Horn, Esq.*, and *Susan A. Marshall, Esq.*, on behalf of KPI Communications, Inc.

DECISION

Adopted: January 17, 1992; Released: January 29, 1992

By the Review Board: MARINO (Chairman), ESBENSEN, and GREENE.

Board Member ESBENSEN:

1. This is a comparative hearing proceeding for authority to construct a new FM station in Meridianville, Alabama. Of the four mutually exclusive applicants, Administrative Law Judge John M. Frysiak (ALJ) selected Virginia Griffith (Griffith) as the superior candidate under the standard comparative issue. *Initial Decision*, 6 FCC Rcd 4683 (1991) (I.D.). No other issues were tried in this case. Exceptions have been filed by Frank Digesu, Sr. (Digesu), Linda L. Alt (Alt), and KPI Communications, Inc. (KPI), and limited exceptions were filed by Griffith. Because of its unexceptional nature, this case occasioned no need for oral argument. We have reviewed the I.D. in light of the hearing record and the exceptions, and conclude that the award to Griffith should be affirmed.

VIRGINIA GRIFFITH

2. Griffith is a sole proprietor and was awarded 100% integration credit based on her proposal to work a minimum of 40 hours a week as general manager of the new station. In this capacity, she will supervise all aspects of station operations, including programming, personnel, finances, public relations, and promotions. I.D., paras. 13, 17; Griffith Exh. 1. The ALJ rejected arguments put forth by Digesu and Alt that Griffith is a mere front for her husband, R. Parker Griffith, who is the owner of Gant Broadcasting, Inc., the licensee of Station WTAK (AM), Huntsville, Alabama. I.D., paras. 91-92. These applicants renew these contentions in their exceptions. Specifically, they assert that Gant Broadcasting, rather than Mrs. Griffith, originally applied to have Channel 231A (at issue here) allotted to Meridianville; that both Griffiths applied to have the license of Station WKQD-FM, Tullahoma, Tennessee, transferred to a company they controlled, Camellia Broadcasting, Inc.; that Mr. Griffith is the owner of the property to be used here for the applicant's site, and also provided his personal guarantee on the applicant's bank letter; that during a television show dealing with Huntsville, Alabama radio on which the Griffiths appeared, Mr. Griffith dominated the interview; that Mrs. Griffith's testimony regarding her husband's role in her application lacked candor; and that the Griffiths' proposal to divest their interests in Station WKQD-FM is unbelievable.

3. At first blush, and without more, these arguments would appear to be rather persuasive. However, based upon our thorough review of the record, we will deny these exceptions because we agree with the ALJ that Mrs. Griffith's integration proposal is credible. *See* I.D., para. 91. As we recently had occasion to note, the Commission and Board will not hesitate in denying quantitative integration credit to mere "paper proposals," *see Lorraine Walker Arms*, 6 FCC Rcd 5586 (Rev. Bd. 1991), but such denials must be premised on *compelling and specific record evidence* establishing that the subject proposal is inherently unreliable. *See Coastal Broadcasting Partners*, 6 FCC Rcd 4242, 4248 (Rev. Bd. 1991). Here, we find, as did the ALJ, that the exceptors' contentions are largely speculative, and that Mrs. Griffith's unrebutted testimony establishes the *bona fides* of her proposal.

4. To begin with, the record establishes that although Mr. Griffith owns Gant Broadcasting, he is a practicing physician who spends full-time in his medical practice and does not spend any time managing Station WTAK (AM). Tr. 130-131. His "primary job is being a doctor," and he devotes 40 hours per week to his practice. *Id.* Mrs. Griffith, on the other hand, has had several years of day-to-day broadcast experience, having worked at WTAK since 1984, where she has served as office manager, as general manager from 1986 to 1988, and as chief executive officer since 1988. Griffith Exh. 1, pp. 1, 4. During her employment there, the station's ratings improved from a 2 or 3 share to a 6.7 share. Tr. 115, 140-141. Second, as to the Meridianville channel allocation, although Gant originally applied for the allocation and paid for the frequency search, Mrs. Griffith was actively involved in the process from the beginning. She first learned from WTAK's engineer, Mark Bond, of the availability of the channel, discussed the matter with her husband, and hired Gene Sisk, her present engineer, to do a frequency search. She then participated in the Rule Making filing as Gant's corporate secretary. Tr. 42-45. Thereafter, prior to the Commission's approval of the allocation, she decided to apply for the station in her own right. Tr. 50-52. She testified that she would not seek her husband's advice in running the station, but might hire WTAK's present general manager (whom she had hired at

WTAK) to assist her as general sales manager of the new station. Tr. 56-58. She explained that, after operating a daytime AM station (WTAK), she wanted an FM station; that she considered it her "security blanket"; that she did not need any other investors; and did not want any property divisions, or "to have to answer to anybody in Meridianville except the FCC and the commitment I make to my community." Tr. 52, 132-133.

5. Other substantial indicia of Mrs. Griffith's control over her application include the following. She sought and retained her own communications counsel, informed him of her interest in applying for the FM facility, and paid his retainer fee as well as the other costs of prosecuting the application from a personal account which she established in 1983 from an inheritance (and to which her husband does not contribute). Tr. 52-54, 59-60; Alt Exh. 6. She obtained from counsel a blank application form which she completed without her husband's assistance. Tr. 67-68. Based on her experience at WTAK, and after speaking to her engineer and attorney, Mrs. Griffith prepared a budget for the station prior to filing the application. Tr. 112-113. She submitted her budget to the Colonial Bank, which she chose because she had borrowed from that bank previously, and obtained a bank commitment letter. Tr. 73, 75-76, 113. In these circumstances, the fact that Mr. Griffith agreed to provide his personal guarantee for the bank loan is not indicative of any control on his part, nor is such a guarantee requirement by lending institutions unusual. *See Scottsdale Talking Machine and Wireless Co., Inc.*, FCC 91R-114, released December 27, 1991, at para. 13, and cases cited therein. Mrs. Griffith also independently obtained a transmitter site (which, contrary to Alt's exception, is not owned by her husband) with the assistance of a real estate agent. Tr. 113-114.[1] Also contrary to Alt's contention, Mrs. Griffith did not lack candor in her testimony regarding her husband's role, but in fact conceded, as the ALJ found, that she spoke to him regarding the site acquisition and loan guarantee. *See* I.D., para. 92. In view of Mr. Griffith's rather limited participation in his wife's application, however, there was no apparent motive for Mrs. Griffith to conceal these facts, and the ALJ, who observed her, specifically did not find that her testimony lacked candor. *Id.* Nor do we read anything nefarious into the fact that during a television interview regarding WTAK, questions were answered by its owner, Mr. Griffith. It is equally speculative for the exceptors to conclude from the bare fact that the Griffiths own two-thirds of Camellia Broadcasting, Inc., which was the proposed assignee of Station WKQD-FM, that Mr. Griffith will therefore dominate his wife's Meridianville application. Finally, contrary to Digesu's surmise, and as found by the ALJ, there is no record evidence that Mrs. Griffith will not honor her pledge to divest her interest as proposed assignee of Station WKQD-FM in the event of a grant herein. *See* I.D., paras. 15, 92.[2] In sum, the record evidence supports the ALJ's conclusion that Griffith is entitled to 100% integration credit. *See Scottsdale Talking Machine, supra*; *Oliver Kelley and Mary Ann Kelley*, FCC 91R-110, released December 16, 1991, at para. 13.

FRANK DIGESU, SR.

6. Digesu is a sole proprietor who proposes to be integrated on a full-time basis as the General Manager of the proposed station. Currently a used car dealer, Digesu claims that he will divest himself of his dealership in the event of a grant of his application. The ALJ credited Digesu's proposal. I.D., paras. 3, 4, 5, 83. As a comparative matter, however, Digesu's only means of prevailing over Griffith, as he recognizes in his exceptions, is to discredit Griffith's full-time integration proposal. *See* Digesu Br. at 14. We have rejected Digesu's contentions, however, and awarded Griffith full integration credit. Digesu takes no exception to the ALJ's comparative qualitative evaluation of Griffith and Digesu, and these findings and conclusions therefore stand. 47 CFR §§ 1.277(a); 1.279. Specifically, the ALJ concluded that although both applicants were substantially enhanced by local residence and civic participation, Griffith was preferred because she had more diverse contacts in the community and a greater amount of civic participation in the more recent past. The ALJ also noted that Griffith's proposal was further enhanced by her broadcast experience and female status, factors which Digesu did not possess. I.D., para. 105. We concur in these judgments. Accordingly, Digesu's application will be denied.

LINDA L. ALT

7. Alt is also a sole proprietor who proposes to be integrated full-time as the general manager of her station. I.D., paras. 31-32. The ALJ found, however, that although there was no record evidence to indicate that Alt would not be involved in the day-to-day management of the station, other evidence showed that she would not be in sole control of the station. Specifically, the ALJ found that Alt had been assisted throughout the application process by both her husband, Emile Alt, and her brother-in-law, Donald Alt, who is an experienced broadcaster. This assistance extended to the selection of an engineer and legal counsel, location of a transmitter site, and payment of prosecution expenses out of a joint checking account. The ALJ further noted that Alt had involved her husband financially in a separate antiques business which she claims to own as a sole proprietorship. Accordingly, based on *Richard P. Bott, II*, 4 FCC Rcd 4924 (Rev. Bd. 1989), *rev. denied*, 5 FCC Rcd 2508 (1990), the ALJ awarded Alt only 50% integration credit. I.D., paras. 93-95.

8. In her exceptions, Alt disputes the ALJ's finding that her husband helped prosecute her application. She states that, apart from the programming portion of the application, which her husband helped her with, she alone prepared the bulk of the application with only counsel's assistance. Furthermore, Alt contends that she was personally responsible for finding the transmitter site, and for handling the public notice of her application filing. Alt also asserts that she herself performed all "substantive activities" involved in arranging financing for the applicant, and disputes the ALJ's finding that her use of joint funds to pay application expenses (from a joint checking account with her husband) should be held against her. Finally, Alt argues that her husband has no role in her antiques business, and that the ALJ's reliance on *Bott* is misplaced because the supposedly inactive spouse there had acted as a joint owner with his wife in a

previous broadcast venture and proceeded to behave in the same manner in the prosecution of her pending application.

9. While the question is a close one and the record is not a model of clarity, the tenor of Mrs. Alt's testimony is that having no broadcast background herself, she sought the assistance of her brother-in-law, who does have such experience, and her husband in the application filing, but that she too has actively participated in the process. Thus, for example, Mrs. Alt testified that she used her brother-in-law's bank to obtain her financial commitment, rather than her own bank, because she wanted a bank that was familiar with financing broadcast stations. Tr. 149. While her husband sent the financial information to the bank, this package consisted of their *joint* financial statements for 1987 and 1989. Tr. 150. She also testified that she selected the transmitter site although her husband assisted her by going along and inspecting it with her. Tr. 151. She and her husband both appear to have been active in preparing the programming section of the application, and he also assisted her in preparing the budget she sent to the bank and in reading over the public notice she brought to the newspaper for publication. Tr. 151-153. Mrs. Alt paid the $1800 filing fee and her legal expenses out of joint funds (which include money received by her from an inheritance) because she and her husband maintain their funds in joint checking accounts (Tr. 153-154), although she will set up her own business account if she receives the station authorization. Tr. 165. As for her antiques business, she runs that by herself (although her husband sometimes accompanies her on buying trips and can write checks on her account because it too is apparently a joint account). Tr. 156-157, 162. Mrs. Alt's husband is a physicist with no broadcast experience. Tr. 150, 157. In the last three years, she has seen her brother-in-law (and his wife) two or three times a year, and has had no other contact with him. Tr. 166.

10. As we have recently reiterated, the Commission has traditionally recognized that family relationships may have attributes which would raise questions in non-family situations, and does not assume that these family relationships necessarily "suggest an unspoken interest in the applicant." *Sound Broadcasting Co.*, 6 FCC Rcd 3621, 3628 (Rev. Bd. 1991); *Scottsdale Talking Machine and Wireless Co., Inc., supra*, at para. 12; *Oliver Kelley and Mary Ann Kelley, supra*, at para. 13. Thus, the sharing of joint funds and their use in the prosecution and construction of the proposed station, as is the case here, is not in and of itself indicative of an unintegrated spouse's control of an undisclosed ownership interest in the applicant. *See Bott, supra*, 4 FCC Rcd at 4929. In this case, unlike the situation analogized to in *Bott* by the ALJ, Mr. Alt, a physicist by profession, has no more broadcast experience than his wife; moreover, apart from his initial assistance, there is no direct evidence that Donald Alt, Mrs. Alt's brother-in-law, has assumed significant control or intends to play an active role in the proposed station. In short, while serious questions have been raised concerning the support and assistance Mrs. Alt received from family members, these activities do not necessarily suggest a hidden interest in her application that fatally undermines her assertion that she will be in sole control of the station. *See Scottsdale*, at paras. 8- 12, and *Oliver Kelley*, at para. 13 (summarizing and contrasting cases involving passive owners and/or active non-owner broadcaster spouses where credit was denied). Nevertheless, it is unnecessary to finally resolve whether or not the ALJ erred in reducing Alt's integration credit to 50% because, based on the ALJ's other findings, the accuracy of which is not excepted to by Alt, Griffith would prevail qualitatively even if Alt's proposal is fully credited.

11. More specifically, as to local residence, Griffith is a long-term service area resident, having lived there continuously from 1976 to the present, whereas Alt, who is also a service area resident, has been such only since 1982. I.D., paras. 27, 37. Although Alt also resided within the service area for approximately 18 months between 1965 and 1967, this residence is of little value since it would not afford any familiarity with the current conditions and needs of the service area. *See Ruth Payne Carmen*, 1 FCC Rcd 46 (Rev. Bd. 1986). Reflecting her longer-term residence, Griffith also has a longer and more continuous record of civic activities dating from 1979 to the present, whereas Alt's civic activities date from 1982 to the present. I.D., paras. 29, 39-48. Although Alt correctly points out that a number of Griffith's recent activities post-date her application filing and must therefore be accorded little weight, *see Colonial Communications, Inc.*, 6 FCC Rcd 2296, 2297 (1991); *The Baltimore Radio Show, Inc.*, 4 FCC Rcd 6437, 6441 (Rev. Bd. 1989), *rev. denied*, 5 FCC Rcd 3712 (1990), Alt is hoist by her own petard in this respect since the same is true of her own activities. Leaving aside these recent activities, Griffith still has a continuous record of civic participation which includes such roles as president of the Junior League of Huntsville, president of the Twickenham Historic District Association, chairman of the Weeden House Committee, and board member of the Historic Huntsville Foundation, which are leadership positions entitled to greater weight than the mere membership activities which largely characterize Alt's participation in organizations such as the Officers' Wives Club of Red Stone, the Red Stone Garden Club, and the East Clinton Elementary School PTA. *See Rebecca L. Boedker*, 6 FCC Rcd 2557, 2558 (1991). Thus, under the unified comparative factor of local residence and civic activities, *see Ronald Sorenson*, 6 FCC Rcd 1952 (1991), which is an enhancement factor of primary importance, *see Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965), Griffith is preferred. Moreover, Griffith's superiority is strengthened by her broadcast experience since 1985, which includes broadcast management, whereas Alt has no such experience. The applicants are otherwise equally enhanced for female status and no other differences distinguish them. In sum, Alt cannot prevail comparatively over Griffith in any event.

KPI COMMUNICATIONS, INC.

12. KPI, the only applicant that is not a sole proprietorship, is a Delaware corporation, which is authorized to issue 100 shares of common stock, 25 of which shares are designated as voting stock, and the remainder non-voting. The stockholders of KPI and their respective ownership and voting control are as follows (I.D., para. 51):

Name	Number of Shares	Type of Stock	Percent of Ownership Interest	Percent of Voting Control
Charley S. Burruss	25	Voting	25%	100%
John C. Taylor	25	Nonvoting	25%	0%
Donna Taylor	25	Nonvoting	25%	0%
Landon McCrary	25	Nonvoting	25%	0%

Charley Burruss proposes to work full time as KPI's General Manager. As such, he plans to be exclusively in charge of hiring, firing, and overall supervision of station staff, preparation of station budgets, review of financial performance, formulation and approval of programming, promotion, and public service policies, establishment of sales goals and practices, and administration and implementation of the station's EEO program. I.D., para. 65. KPI seeks 100% integration credit based on Burruss' proposed role.

13. The ALJ, however, awarded KPI only 25% integration credit, on the basis of Burruss' equity interest. He held that, notwithstanding KPI's corporate structure, all of KPI's equity owners will, in fact, jointly manage the proposed station. He found that three of KPI's owners, Burruss, John Taylor, and Landon McCrary, have since 1979 operated a video production company, Kudzu Productions, Inc., which they equally control (although Burruss is the 51% owner), and which business was so structured in order to be eligible for set aside contracts under the "Section 8(a)" program administered by the Small Business Administration. The ALJ also found that the same individuals have equal shares in a real estate partnership as well. He further found that the other KPI shareholders, rather than Burruss, were active in prosecuting the KPI application, which was originally the idea of Donna Taylor (John Taylor's wife), who has a broadcast background, but that Burruss was made sole voting principal in order to achieve a minority preference. The ALJ further found that Burruss intended to retain his ownership interest and a substantial managerial role in Kudzu even if awarded the construction permit. In these circumstances, the ALJ concluded that in all likelihood the KPI stockholders will act as they have in the past, that Burruss had not adequately distanced himself from the nonvoting shareholders, and that all would participate in the control of the proposed station. I.D., paras. 97-102.

14. In its exceptions, KPI argues initially that Messrs. Taylor, McCrary, and Burruss do not equally control Kudzu, but that Burruss originated the idea for the company and has always been its majority owner and day-to-day manager, whereas Taylor and McCrary spend their time on technical rather than managerial matters. KPI also asserts that Burruss has pledged to turn over his day-to-day responsibilities at Kudzu to Taylor and McCrary, and to devote no more than a few hours a week to telephone calls or meetings on major policy matters at Kudzu. Further, KPI alleges that Burruss, rather than the nonvoting stockholders, has played the major role in prosecuting the application, including hiring KPI's attorney and engineer, selecting a transmitter site and negotiating its purchase, and obtaining financing. KPI points out that Burruss is the only person authorized to withdraw funds from KPI's checking account and, since the formation of the corporation, has been the only KPI shareholder to play any decision-making role in the prosecution of the application, which is consistent with a Memorandum of Agreement entered into by the four shareholders on the day their stock was issued, vesting all management control in Burruss. KPI also submits that the long-standing relationship of its shareholders supports KPI's *bona fides* because Commission cases routinely hold that it is the lack of familiarity and prior business dealings between the active and passive owners that undermines the reliability of the proposed business structure. Finally, KPI submits that once its integration credit is restored to 100%, it should prevail under the qualitative analysis *vis-a-vis* Griffith.

15. The Commission expects applicants to establish the overall reliability of their integration proposals in order to receive comparative credit. *Royce International Broadcasting*, 5 FCC Rcd 7063 (1990). Not only does this general principle apply to questions of whether the applicant's described ownership structure accurately reflects how actual control will be exercised, *id.*, at 7064, but it is also invoked to disallow credit where a principal's outside employment activities cast substantial doubt on whether the integration proposal is likely to be effectuated. *Leininger-Geddes Partnership*, 2 FCC Rcd 3199 (Rev. Bd. 1987), *rev. denied*, 3 FCC Rcd 1181 (1988). In this regard, it is the applicant, of course, that has the burden of proof. *Coastal Broadcasting Partners*, 6 FCC Rcd 4242, 4243 (Rev. Bd. 1991); *Beach Broadcasting Limited Partnership*, 6 FCC Rcd 885, 886 (Rev. Bd. 1991). In this case, we affirm the ALJ's holding that KPI's proposal is inherently unreliable because, apart from the other doubts raised by the record, it appears that KPI has not met its burden of establishing that Burruss will sufficiently extricate himself from his substantial role at Kudzu to manage the proposed station by himself.

16. More specifically, Burruss is the 51% owner, President, Chairman of the Board, Chief Executive Officer, and day-to-day manager of Kudzu, a company he established with McCrary and Taylor in 1979. KPI Exh. 3. He works full-time at that position approximately 40 to 60 hours a week and sometimes as many as 80 hours per week. Tr. 180-182, 307-308. As his titles and work schedule suggest, he is "the boss," in charge of all managerial and administrative activities, including sales, promotions, and bringing in most of the business, setting policy, supervising Taylor and McCrary, hiring and firing, doing the "creative" work, negotiating contracts, handling financial planning and the budget, preparation of tax returns, and dealing with the company accountant and lawyer. Tr. 216-220, 307, 309-312, 230-231. In short, he is "critical" to Kudzu's operations and has been from the outset. Tr. 222. Despite this impressive record and his extensive involvement and primary role at Kudzu, Burruss now claims that he will simply turn over all his day-to-day management and administrative responsibilities to Taylor and McCrary in order to effectuate his integration proposal. But other evidence casts substantial doubt on this plan. First, Burruss will retain his controlling ownership of Kudzu and apparently all his executive positions, although the others will take over his "day-to-day managerial responsibilities." KPI Exh. 3, pp. 2-3; tr. 339. How McCrary and Taylor will specifically assume Burruss' vital policy-making, managerial, sales, and administrative functions is not clear, particularly in view of Taylor's testi-

mony that he and McCrary are "technically oriented" and do not like administrative work, whereas Burruss is "more management and administrative," and that his "forte is probably sales and running the company." Tr. 285-286. In light of these uncertainties, it is not particularly reassuring that, notwithstanding his proposed integration, Burruss plans to continue to exercise managerial authority at Kudzu and to have the final say on all major decisions, and that he will receive information on a daily basis from the people working at Kudzu in order to make those decisions. Tr. 339-340. He will accept phone calls while working at the station to discuss matters of importance concerning Kudzu, will make important decisions regarding Kudzu while at work at the station, and will attend Kudzu meetings if necessary. Tr. 340-341, 360. Burruss' *ipse dixit* that these continuing activities will only require "a couple of hours" a week (tr. 360) is not persuasive in view of the extensive nature of his present role, his critical importance to Kudzu since its creation, his intention to retain his controlling ownership and managerial authority, and the absence of specific evidence of how his many functions will be performed by his Kudzu associates. *See* I.D., para. 68. In short, in view of all the circumstances presented, KPI has not made the "specifically convincing showing" required of applicants that Burruss can accommodate his continuing Kudzu interests in order to effectuate his full-time station management plans. *See Victorson Group, Inc.*, 6 FCC Rcd 1697, 1699 (Rev. Bd. 1991); *Marlin Broadcasting of Central Florida, Inc.*, 5 FCC Rcd 5751, 5752 (1990), *aff'd*, No. 90-1505 (D.C. Cir. January 7, 1992). Hence, KPI is entitled to no integration credit.

17. Even were KPI entitled to full integration credit, we would deny its exception that its qualitative enhancements are superior to those of Griffith. As noted earlier, Griffith is a long-term area resident, as is Burruss. I.D., para. 69. Burruss' greater length of residence does not provide an advantage because many of these years were remote in time during his childhood and adolescence (and were broken by a three-year stint in the Army), and because both applicants are well-enhanced for long-term residence. *See Naguabo Broadcasting Co.*, 6 FCC Rcd 4879, 4880 (1991); *Colonial Communications, Inc.*, 6 FCC Rcd 2296, 2297 (1991); *Jarad Broadcasting Co., Inc.*, 1 FCC Rcd 181, 187 (Rev. Bd. 1986). KPI concedes that Griffith's civic activities are more extensive than those of Burruss (Br. at 22), and as already reviewed, Griffith's background includes numerous leadership roles, whereas KPI can only point to Burruss' assistance to the local United Way's 1979 fund-raising drive, his scouting coordinator activities with the Boy Scouts, and his work with the board of the Arts Council, Inc., which latter activity earns little credit because it appears to have largely postdated the application filing. *Id.*; I.D., paras. 72-79; Tr. 349-350. On balance, Griffith's more significant, continuous, and numerous civic activities readily establish that her proposal is superior in terms of local familiarity and deserves a significant preference therefor. *See Ronald Sorenson*, at 1952-1953; *Naguabo*, at 4880. KPI, however, would receive an equally strong preference based on Burruss' minority status, because minority participation and residence background are co-equally the most important qualitative attributes. *Radio Jonesboro, Inc.*, 100 FCC 2d 941, 945 (1985). Griffith, on the other hand, receives additional preferences for her female status and broadcast experience which, as noted earlier, includes managerial responsibility. Thus, Griffith's three preferences, including a significant one for residence/participation background outweigh KPI's one significant preference for minority status. Griffith is the preferred applicant.

18. ACCORDINGLY, IT IS ORDERED, That the application of Virginia Griffith (File No. BPH-880127MN), for a new Class A FM station at Meridianville, Alabama, IS GRANTED, and the applications of Frank Digesu, Sr. (File No. BPH-880126ME), Linda L. Alt (File No. BPH-880128MO), and KPI Communications, Inc. (File No. BPH-880128MW), ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] Although Mrs. Griffith, based on her engineer's advice, originally discussed with her husband a site on land he owned, she ultimately selected another site which was the one specified in her application.

[2] In any event, in an amendment filed February 20, 1991, and accepted by the ALJ by *Order*, FCC 91M-854, released March 7, 1991, Griffith reported that subsequent to grant of the assignment application, Camellia notified the assignor that it was terminating the sales agreement because the grant would not become final within the time set forth in the agreement. It is therefore unnecessary for the Board to condition grant of Griffith's application on fulfillment of her divestiture pledge. *Cf. Barry Skidelsky*, FCC 91R-115, released January 2, 1992, at para. 37.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of Culpepper Communications, Inc., Licensee of Station WPFM(FM), Panama City, Florida for Forfeiture — File No. BPH - 880817YA

MEMORANDUM OPINION AND ORDER

Adopted: January 17, 1992; Released: January 27, 1992

By the Commission: Commissioner Quello concurring.

1. The Commission has before it for consideration a Notice of Apparent Liability (NAL) for forfeiture released August 10, 1990, to Culpepper Communications, Inc., licensee of Station WPFM(FM). *In re Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area (WPFM(FM))*, 5 FCC Rcd 4893, 4896 (1990). The Notice of Apparent Liability for Forfeiture for $15,000 was issued for repeated failures to comply with the Commission's affirmative action provisions. 47 C.F.R. Sections 73.2080 (b)(3), (b)(5), (c)(2) and (c)(5).

2. The NAL set out a record of inadequate EEO efforts. Review of the station's renewal application and inquiry response revealed that the licensee failed to recruit minorities or analyze its efforts to recruit, hire, promote and retain minorities during the period under review.

3. Culpepper Communications, Inc. has not responded to the NAL.

4. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), that Culpepper Communications, Inc. FORFEIT to the United States the sum of fifteen thousand dollars ($15,000) for failing to comply with the Commission's Affirmative Action provisions. 47 C.F.R. Sections 73.2080 (b)(3), (b)(5), (c)(2) and (c)(5). Full payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission within 30 days of the release date of this Order. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. Section 1.80 and Section 504(a) of the Communications Act of 1934, as amended, 47 U.S.C. Section 504(a), as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

NEW LIFE ENTERPRISES, INC. File No. BPH-861231MC

For Construction Permit
for a New FM Station on Channel 257A
in Fresno, California

MEMORANDUM OPINION AND ORDER

Adopted: January 2, 1992; Released: January 27, 1992

By the Commission:

1. The Commission has before it a "Petition for Rehearing," filed by New Life Enterprises, Inc. ("New Life") on March 21, 1988, requesting that the Commission reconsider an action by the Mass Media Bureau which dismissed New Life's application and designated for comparative hearing fourteen other mutually exclusive applicants for the subject Fresno frequency. *Carta Corporation*, 3 FCC Rcd 798 (MM Bur. 1988).[1]

2. Prior to filing the instant application, New Life Principals Dan W. Jantz and N. James Patterson, Jr. filed an application for a new FM service on Channel 281A in Woodlake, California (File No. BPH-850503MA). The Woodlake application was designated for comparative hearing in MM Docket No. 87-430 on October 10, 1987. *SEB Broadcasting, Inc.*, 2 FCC Rcd 6401 (MM Bur. 1987). On December 31, 1986, during the pendency of the Woodlake application, New Life filed the instant Fresno proposal.[2]

3. The predicted 1.0 mV/m contours of New Life's Fresno and Woodlake applications overlapped in a manner then prohibited by Section 73.3555(a) of the Commission's multiple ownership rules.[3] Citing *Big Wyoming Broadcasting Corp.*, 2 FCC Rcd 3493, 3495 n. 10 (1987) (*"Big Wyoming"*), and the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19,936 (May 13, 1985) (*"Report and Order"*),[4] the Bureau on February 19, 1988 found that:

> New Life attempted simultaneously to prosecute two applications, both of which could not be granted. Since New Life's instant application was filed on December 31, 1986, during which time its Woodlake, California application was "pending and undecided," New Life's Fresno, California application was inconsistent and expressly prohibited under 47 C.F.R. § 73.3518 and must therefore be dismissed.

3 FCC Rcd at 799.

4. In its petition for rehearing, which will be treated here as a petition for reconsideration under 47 C.F.R. § 1.106(a)(1), New Life argues that: (i) the overlap between the predicted 1 mV/m contours of the Fresno and Woodlake proposals was *de minimis*, comprising but 22.29 square miles; (ii) New Life was therefore in "substantial compliance" with the duopoly rule; (iii) notwithstanding the *de minimis* overlap of New Life's Fresno and Woodlake predicted 1 mV/m contours, in actuality there would be no prohibited overlap between the two proposals; and (iv) the staff's allegedly retroactive application of *Big Wyoming* constituted an abuse of discretion, especially since New Life voluntarily dismissed its Woodlake application prior to dismissal of the Fresno application. Each of these arguments will be considered below.

5. We turn first to New Life's argument that the 1 mV/m overlap between its Fresno and Woodlake proposals was *de minimis* and that therefore New life was in substantial compliance with the duopoly rule. New Life claims that study of the two applications discloses an overlap area of 22.29 square miles. However, New Life states that re-analysis by its consulting engineer, taking account of upgraded terrain studies and the effect of side-mounting the proposed antenna, revealed that the degree of predicted overlap would be 15.97 square miles. Petition, at exhibit 6 of Appendix A. New Life states that, using the 22.29 square mile figure, this overlap would encompass an area with 7,440 people, or 1.78% of the population within the Fresno 1 mV/m contour. Using the 15.97 square mile figure, New Life concludes that the overlap would encompass an area with 2,135 people, or 0.51 of the population within the Fresno 1mV/m contour. Accordingly, claims New Life, "a threshold issue exists as to whether or not New Life's Fresno and Woodlake applications were inconsistent or whether they substantially complied with the Commission's duopoly rules without regard to the necessity of a waiver thereof." *Id.*, at p.8. New Life then analogizes the instant duopoly matter to Commission city coverage requirements,[5] for which it states the Commission has adopted a "substantial compliance" processing standard. New Life proposes that there is "no apparent reason why the Commission should invoke the substantial compliance doctrine in principal community coverage situations but ignore the substantial compliance doctrine in duopoly situations." *Id.*, at p.9. Petitioner then concludes that the failure to apply the "substantial compliance doctrine" in the present duopoly situation is arbitrary, capricious, and violative of the maxim that

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[1] Carta Corporation, an applicant in the Fresno proceeding, filed an Opposition to New Life's petition on April 15, 1988, and New Life filed a reply to the Opposition on May 3, 1988. Carta then filed a "Motion to Strike" New Life's reply on May 12, 1988, and New Life filed an opposition to the motion on May 25, 1988. Carta's Motion to Strike simply takes issue with arguments either raised or restated in New Life's Reply. New Life's opposition thereto attempts to counter those objections. Both pleadings are unauthorized under 47 C.F.R. § 1.45(c), and neither presents arguments relevant to the dispositive issues. Accordingly, they will not be further considered here.

[2] On November 19, 1987, eleven months later, New Life requested dismissal of its Woodlake application, which request was granted by the Presiding Administrative Law Judge.

[3] The multiple ownership rules were subsequently modified to prohibit overlap of the 3.16 mV/m (70 dBu) contours. *First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1723 (1989).

[4] The *Report and Order* is reprinted at 58 RR 2d 776 (1985).

[5] *See* 47 C.F.R. § 73.315.

similarly situated parties may not be treated differently without explanation, citing *Melody Music., Inc. v. FCC*, 347 F.2d 730 (D.C. Cir. 1965), and *Garrett Broadcasting Service v. FCC*, 513 F.2d 1056 (D.C. Cir. 1975). Petition, at p. 9.

6. New Life's arguments regarding the *de minimis* nature of the overlap involved are unpersuasive. Even where the Commission finds overlap to be *de minimis*, the applicant must still request and obtain a waiver of the duopoly rule. *See, e.g., Storer Communications, Inc.*, 59 RR 2d 611 (1985). New Life requested no waiver here. As the United States Court of Appeals for the District of Columbia Circuit observed in *Columbia Communications Corp. v. FCC* [6]

> What this court said nearly twenty years ago applies with greater force in today's bureaucratic world:
>
> > When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. The Commission staff must process annually thousands of applications. It cannot be expected to do research for applicants or to probe the underlying... economic data.... If the Commission staff were required to assume such a burden, little or nothing would be accomplished.
>
> *Rio Grande Radio Fellowship , Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968) (per curiam).

New Life's application was in violation of the multiple ownership rules when filed, *see* 47 C.F.R. § 73.3555, and a waiver request was not filed. Therefore, we believe that it was properly dismissed. *See* 47 C.F.R. § 73.3566(a).

7. Furthermore, while New Life now makes the flat assertion that the subject overlap area is *de minimis*, it fails to make a sufficient showing to support such an assessment. The determination of whether or not an overlap is *de miminis* requires consideration of the totality of the circumstances, which includes the size of the overlap, the population within the overlap area, and the percentage of area and population within each station's 1 mV/m contour represented by the overlap. Generally, the cases in which we have considered overlap *de minimis* involved a percentage of both area and population within each station's 1 mV/m contour overlap area of less than 1%. *KSOO-TV , Inc.*, 43 FCC 2d 879 (1973); *Arcadian Television Corp.*, 51 RR 2d 743 (1982); *Radio Station WREN Co.*, 52 RR 2d 601 (1982).*Compare Farmville Broadcasting Co.*, 47 FCC 2d 463 (1974)[7] (overlap of 11% population/40% area of WFAG and 4% area of WPTF not *de minimis)* and *Piedmont-Crescent Broadcasting Co.*, 35 FCC 2d 640 (1972) (overlap of 2.7% of WRAL-FM contour and 4% of WMDE(FM) contour not *de minimis)*. New Life has provided no showing as to the percentage of area and population served by the Woodlake proposal which would be in the overlap area, and only in its May 3 reply did it address the percentage of overlap of the Fresno application's service area.[8] While we will examine the totality of circumstances when making a determination that duopoly overlap area is *de minimis*, a positive finding requires more data than is presented here. We are unwilling to conclude, without more, that an overlap area involving from 15.97 to 22.29 square miles and from 2135 to 7440 persons is *de minimis*.

8. We also reject New Life's argument that it is in "substantial compliance" with the duoply rule. Petitioner is correct that the Commission has adopted a policy of "substantial compliance" with respect to the city coverage requirement. *See Richard Culpepper*, 5 FCC Rcd 2983, 2985 n. 2 (1990). However, New Life provides no authority for its novel proposition that there can be "substantial compliance" with the duopoly rule, and no such authority can be found. New Life merely asserts that "there is no palpable reason why the substantial compliance doctrine should be routinely applied in the resolution of principal community service issues and not applied in the resolution of duopoly issues." Petition, at 9. The rule in effect at the time New Life's Fresno application was filed prohibited *any* overlap of the 1 mV/m contours, and there is nothing in the regulatory history or subsequent case interpretations of the rule which suggest that adoption of a "substantial compliance" standard is appropriate. In fact, it has been consistent Commission policy to enforce the duopoly rule if the types of ownership and overlap that trigger its application are present. *United Community Service*, 37 FCC 2d 953, 960 (1972).[9] Thus, applicants with proposals violating the duopoly and inconsistent application rules are not "similarly situated" to applicants proposing substantial compliance with the Commission's city coverage rules.[10]

9. New Life's next argument is that, notwithstanding the apparent overlap between the Fresno and Woodlake 1 mV/m contours resulting from the staff's assumption of circular antenna radiation patterns, in actuality there was no prohibited overlap because (i) a side-mounted antenna such as that proposed by New Life in Woodlake "would result in a substantial reduction in all directions except that in the direction of the major lobe, toward Woodlake" (petition, at p. 10); a reduction of as little as 1.5 dB from either New Life proposal, or a combination thereof, would preclude any actual overlap; and (ii) as New Life's engineering consultant observes, based upon upgraded terrain studies coupled with the measured antenna pattern

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[6] 832 F.2d 189, 192 (D.C. Cir. 1987).:

[7] In one case, the Commission found that, where the area of overlap between two stations was 11.4 square miles and included a population of 267 persons, the overlap was *de minimis*. The area of overlap constituted 2.7% of one station's service area, but only, 7% of the other station's service area. *WREL, Inc.*, 45 RR 2d 319 (1979).

[8] New Life estimates its service area overlap to be in the two-to-three percent range. Reply, at p. 3.

[9] The Commission is not without flexibility and may, within its discretion, waive the fixed multiple ownership rules where an otherwise rigid application of the rules would run contrary to other public interest concerns. *See, e.g., Capital Cities Communications, Inc.*, 59 RR 2d 451 (1985). As indicated above, such circumstances have not been shown here.

[10] *Melody Music* and its progeny "appropriately recognize the importance of treating parties alike when they participate in the same event or when the agency vacillates without reason in the application of the statute or the interpreting regulations." *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987). Here, New Life cites no precedent which the staff ignored, the transactions are not identical, and there are no circumstances which compel identical treatment.

for the Woodlake proposal, the actual contours had a clearance of over three miles. New Life also emphasizes that these conclusions do not result from any changes in the technical proposals for Fresno or Woodlake, but simply from more detailed examination of the existing proposals.

10. We reject New Life's argument concerning the antenna characteristics involved and its claims that the Commission's assumption that non-directional antennae generate perfectly circular radiation patterns is faulty. It has long been Commission policy to assume the circularity of non-directional antennae: "We recognize the fact that side-mounting results in some degree of distortion from circularity. Permittees should not conclude, however, that our recognition of this fact implies consent to any backdoor methodology whereby an applicant who was granted on the assumption that he would operate nondirectionally introduces parasitic elements and constructs in such a fashion that a directional pattern results." *Etlinger Broadcasting Corp.*, 53 RR 2d 635, 637 n.4 (1983). This policy was restated by by the Commission in a *Public Notice* adopted September 13, 1984:

> In making allotments and in issuing construction permits and licenses the Commission assumes that FM non-directional antennas have perfectly circular horizontal radiation patterns. Actual antenna patterns shall conform to the ideal as closely as is practicable. The use of any technique or means (including side-mounting) which intentionally distorts the radiation pattern of what is nominally a non-directional antenna makes that antenna directional and it must be licensed as such.

"Public Notice, Criteria for Licensing of FM Broadcast Antenna Systems," FCC 84-437, released September 14, 1984. Thus, an applicant wishing to rely on the directional characteristics of a proposed antenna must so specify in its application. New Life did not do so. *See* response to Section V-B, Item 7 of application No. BPH-861231MC. It may not now claim the benefit of directional antenna characteristics.

11. New Life's final argument is that the Commission's allegedly retroactive application of *Big Wyoming* to its Fresno prposal was arbitrary and an abuse of discretion, especially since it voluntarily dismissed the Woodlake application prior to the dismissal of the Fresno application. The application of *Big Wyoming* to its Fresno proposal, alleges New Life, violates the edicts set forth in *Boston Edison Co. v. Federal Power Commission*, 557 F.2d 845 (D.C. Cir. 1977) and *Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398, 401 (D.C. Cir. 1968), which New Life cites for the proposition that an agency must provide notice to affected parties when it changes its standards or precedents. New Life claims that the application of *Big Wyoming* to the circumstances presented here "is fundamentally inconsistent with elementary fairness and with New Life's right to a comparative hearing. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945)." Petition, at p. 15.

12. We affirm that New Life's Fresno application was properly dismissed for violation of the Commission's multiple ownership and inconsistent application rules, 47 C.F.R. §§ 73.3555(a) and 73.3518. *Big Wyoming*, far from being a case of first impression, merely restated what had been existing Commission policy with respect to inconsistent applications. As we observed in 1953, Section 73.3518 is designed to "prevent the abuse of our processes by the *filing* of two or more applications which are inconsistent with each other either on their face or in the context of any of our rules." *WSTV, Inc.*, 17 FCC 530, 531 (1953) (emphasis added). Additionally, in 1965, when as in the instant case a majority interest in both applicants was held by the same entity, we held that the appropriate action was the dismissal of the last-filed application. *D.H. Overmyer Communications Co. (Agnes J. Reeves Greer)*, 45 FCC 2d 2272 (1965). Each of these cases was cited in *Big Wyoming*. Here, applications which had impermissible duopoly overlap were filed by the same applicant, New Life. The filing of the Fresno application clearly violated Section 73.3518, which forbids the *"fil[ing]"* of subsequent inconsistent applications "by or on behalf of the same applicant, successor or assignee" (emphasis added), and the dismissal of that application was consistent with long standing Commission precedent. Notwithstanding New Life's assertion to the contrary, this violation occurred even though the Woodlake application had been voluntarily dismissed in hearing before the Fresno application was dismissed by the staff. The rule relates to inconsistent or conflicting applications *at the time of filing*.

13. Furthermore, the dismissal of New Life's Fresno application was compelled by the multiple ownership and inconsistent application rules as they have been applied under our current FM "hard look" processing procedures. Paragraph 24 of the *Report and Order* states that:

> As an additional component of our "hard look" approach, we reiterate our position with respect to multiple applications. Applicants will not be permitted to "flood the Commission's processing line and hearing docket with multiple applications, many of which could not be granted under our multiple ownership rules." *Storer Broadcasting Co.* 43 FCC 1254, 1256 (1953). Accordingly, we shall regard Section 73.3555 as establishing the maximum number of applications acceptable for filing by an applicant. Applications tendered in excess of this number shall be considered inconsistent with Section 73.3518 and returned as unacceptable for filing.

Id.[11]

14. Accordingly, for the reasons set forth above, IT IS ORDERED, that the petition for reconsideration filed by New Life on March 21, 1988 IS DENIED.

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[11] In a recent Notice of Proposed Rule Making in MM Docket No. 91-347, we proposed to modify or eliminate the FM "hard look" processing rules, but stated that any such change would only apply to applications filed after the effective date of the rule changes. *Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications*, 6 FCC Rcd 7265 (1991).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-311

In re Applications of

MARC A. ALBERT	File No. BPH-870918MC
TAYLOR COMMUNICATIONS OF SYRACUSE, INC.	File No. BPH-870918ML
SALT CITY COMMUNICATIONS, INC.	File No. BPH-870918MN
D.J.'S BROADCASTING CO.	File No. BPH-870918MY

For Construction Permit for
New FM Station, Channel 290A,
Syracuse, New York

ORDER

Adopted: January 17, 1992; Released: January 28, 1992

By the Review Board: MARINO (Chairman), ESBENSEN, and GREENE.

1. Pending before the Review Board are (1) the *Initial Decision*, FCC 91D-60, released December 6, 1990 (I.D.), in the captioned proceeding; (2) Exceptions of D.J.'s Broadcasting Co., filed December 26, 1991; and (3) a "Statement in Lieu of Exceptions" (concurring in all aspects of the I.D.) filed by the prevailing applicant, Salt City Communications, Inc., on December 31, 1991.

2. However, neither of the two remaining applicants (Marc A. Albert and Taylor Communications) have timely filed exceptions with the Board. Thus, their applications will be dismissed for failure to prosecute, pursuant to 47 CFR § 1.276(f).

3. ACCORDINGLY, IT IS ORDERED, That the applications of Marc A. Albert (File No. BPH-870918MC), and Taylor Communications of Syracuse, Inc. (File No. BPH-870918ML), ARE DISMISSED, with prejudice, for failure to prosecute pursuant to 47 CFR § 1.276(f).

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-470

In re Applications of

F.E.M. RAY, INC. File No. BPH-870515NL

PLAYA DEL SOL BROADCASTERS File No. BPH-870515NX

For a Construction Permit
for a New FM Station,
Channel 281A in Tucson, Arizona

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 1992; Released: January 27, 1992

By the Commission:

I. INTRODUCTION

1. Before the Commission for consideration is a Review Board decision, *F.E.M. Ray, Inc.*, 6 FCC Rcd 4238 (Rev. Bd. 1991), granting the application of F.E.M. Ray, Inc. (FEM Ray) for a new FM radio station in Tucson, Arizona, and denying the mutually exclusive application of Playa Del Sol Broadcasters (Playa). *See also, F.E.M. Ray, Inc.*, 6 FCC Rcd 573 (I.D. 1991). We agree with the Board's resolution of this case. We wish, however, to comment on certain matters.[1]

II. BACKGROUND

2. The Board, affirming an initial decision by Administrative Law Judge Edward J. Kuhlmann, granted the application of FEM Ray, finding it comparatively superior to the application of Playa based on the integration and diversification criteria. FEM Ray proposes integration of all its voting stockholders and has no media interests, whereas Playa's sole principal, Edward Stolz, proposes no integration and has media interests. The Board rejected Playa's contentions that it was entitled to dispositive comparative credit for its superior coverage area and Stolz's purportedly superior broadcast record as the owner of KWOD(FM) in Sacramento, California.[2] The Board held that, even if Playa were awarded comparative credit on these bases, it could not prevail over FEM Ray. Therefore, the Board concluded that FEM Ray was the comparatively superior applicant. *F.E.M. Ray*, 6 FCC Rcd at 4238 ¶ 5.

3. The Board also rejected Playa's contention that financial, misrepresentation, lack of candor and reporting issues should be added against FEM Ray. The Board found that Playa failed to raise substantial and material questions of fact sufficient to enlarge the issues against FEM Ray. Specifically, the Board found that the record does not support Playa's claims that FEM Ray relied on Greg Cutchall as its primary source of funding, that FEM Ray became financially unqualified because Cutchall's loan commitment is no longer valid, and that FEM Ray failed to report the loss of its financing pursuant to 47 C.F.R. § 1.65. The Board found that FEM Ray has reasonable assurance of committed funding to construct and operate the proposed station and therefore is financially qualified. 6 FCC Rcd at 4238 ¶ 7, 4239-40 ¶¶ 8-9.

III. FEM RAY'S FINANCIAL PROPOSAL

4. Playa argues that the Board erred by refusing to add the requested issues against FEM Ray. Playa again contends that FEM Ray's financial certification was primarily based on a loan from Greg Cutchall, who later could not meet court ordered payments in a divorce proceeding. Furthermore, Playa contends that FEM Ray principal Francine Rienstra admitted that it was necessary to replace Cutchall's loan in order to maintain FEM Ray's financial qualifications, raising questions as to whether or for how long FEM Ray was financially unqualified before it took steps to secure replacement funding. Playa also asserts that FEM Ray's failure to report these matters to the Commission requires the addition of candor and reporting issues.

5. We agree with the Board that Playa has failed to meet its burden of making a *prima facie* showing in order to justify the addition of financial, misrepresentation and candor issues against FEM Ray. *See e.g., Priscilla L. Schwier*, 4 FCC Rcd 2659, 2660 ¶ 7 (1989). Playa's contentions are based on speculation. Playa has failed to make specific allegations of fact, supported by affidavits, sufficient to warrant the addition of issues. *See Schwier*, 4 FCC Rcd at 2660 ¶ 7.

6. Although Playa does not contend that FEM Ray was unqualified when it made its financial certification, Playa asserts, based on its reading of Rienstra's hearing testimony and declarations, that FEM Ray relied on Cutchall's loan to certify its financial qualifications and that it was necessary to replace this loan commitment in order to maintain FEM Ray's financial qualifications. However, contrary to Playa's assertion, Rienstra's declarations state that FEM Ray certified its financial qualifications based on funds committed by its stockholders exceeding its costs by approximately $18,000. *See* Rienstra declarations, May 23, 1990, ¶ 3; July 18, 1990, ¶¶ 2-3. According to Rienstra, Cutchall's loan commitment was a cushion, in the event that the station required additional funding in order to operate after the initial three month period covered by its certification. Rienstra declaration, May 23, 1990, ¶ 3. The pages of the hearing transcript cited by Playa are consistent with Rienstra's declarations, merely attesting that Cutchall's loan commitment is still viable and that another individual has also made a loan commitment to FEM Ray. Tr. at 894-95. Playa has not made any showing to refute these assertions. Contrary to Playa's speculation, the fact that FEM Ray secured a new loan does not demonstrate that Cutchall's loan was the primary basis of FEM Ray's financial certification.

7. Additionally, even assuming that Cutchall's loan commitment is now required to maintain its financial qualifications, Playa fails to show that Cutchall is unable to meet his loan commitment. Although, as Playa observes, Cutchall did not make the payments ordered in his divorce proceeding, Playa provides no evidence as to why he did not do so or otherwise demonstrate the relevance

of that circumstance to this proceeding. In this regard, the fact that FEM Ray obtained an additional loan commitment does not imply that FEM Ray otherwise lacked adequate financing. Playa's contentions to the contrary are mere speculation.[3]

IV. ORDER

8. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed August 14, 1991 by Playa del Sol Broadcasters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Now before the Commission are an application for review filed August 14, 1991 by Playa and an opposition filed August 21, 1991 by FEM Ray. In its opposition, FEM Ray seeks expedited consideration of Playa's application for review. We note that the Commission has committed itself to expeditious consideration of applications for review in routine adjudicatory proceedings and thus we have acted accordingly in this case. *See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 6 FCC Rcd 157, 164 ¶ 50 (1990).

[2] Specifically, the Board found that Playa is entitled only to a very slight to slight preference for its proposed greater coverage area, since, as Playa concedes, both applicants will provide new service to areas and populations that already receive five or more aural services. The Board also found that Playa would not be entitled to full credit for Stolz's broadcast record even if it were deemed superior, since Stolz does not propose to be integrated into the day-to-day management of the Tucson station. 6 FCC Rcd at 4238 ¶ 4. We agree with the Board. *See Omaha TV 15, Inc.*, 4 FCC Rcd 730, 735 ¶ 38 (1989). Therefore, there is no relevance in Playa's present contentions that the Commission should take official notice of the finding in the KWOD(FM) comparative renewal proceeding, *Royce International Broadcasting*, 4 FCC Rcd 7139, 7142-44 (Rev. Bd. 1989)(subsequent history omitted), that Stolz had an exemplary broadcast record and that this circumstance should be treated as a threshold showing sufficient to entitle Playa to claim comparative credit for an unusually good past broadcast record.

[3] Likewise, we reject Playa's contention that the addition of a financial issue is appropriate because Rienstra stated that one of FEM Ray's stockholders had decided to withdraw as an active participant for financial reasons. The testimony Playa relies on in this regard indicates that the stockholder has paid FEM Ray $1,000, has committed to a loan for $1,000 more, and that FEM Ray can ask the stockholder to honor the loan commitment if the funds are necessary. Tr. 938-40. Absent affidavits or documentation raising a substantial and material question of fact concerning the need for this investor's remaining $1,000 commitment, Playa's allegations are based on speculation and do not warrant further consideration. *See Washoe Shoshone Broadcasting*, 5 FCC Rcd 5561, 5562 ¶ 10 (1990). Playa also contends that FEM Ray's financial qualifications are in question because another of its stockholders is involved in a bankruptcy and is a defendant in a civil suit based on breach of contract, fraud in the sale of securities and RICO. However, Playa has not demonstrated that the fact of the bankruptcy and lawsuit have affected FEM Ray's financial qualifications. FEM Ray asserts that this stockholder has satisfied her financial commitment, and Playa offers no evidence disputing this assertion. *See* Rienstra declaration, July 18, 1990, ¶ 7. Furthermore, to the extent that Playa suggests that FEM Ray had an obligation to report the pending lawsuit, we note that Playa has not demonstrated that the outcome of the litigation would make a material difference in FEM Ray's finances or would be of decisional significance in determining FEM Ray's qualifications to be a Commission licensee. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990); *Policy Regarding Character Qualification in Broadcast Licensing*, 102 FCC 2d 1179 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987); *Van Buren Community Service Broadcasters, Inc.*, 87 FCC 2d 1018, 1020 ¶ 7 (Rev. Bd. 1981).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-10

In the Matter of

Amendment of Section 73.202(b), RM-7865
Table of Allotments,
FM Broadcast Stations.
(Sanibel and San Carlos
Park, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 15, 1992; Released: January 28, 1992

Comment Date: March 20, 1992
Reply Comment Date: April 6, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ruth Communications Corporation ("petitioner"), permittee of Station WRWX(FM), Channel 253A, Sanibel, Florida, requesting the reallotment of Channel 253A from Sanibel to San Carlos Park, Florida, as that community's first local transmission service, and the modification of its construction permit to specify San Carlos Park as its community of license. Petitioner states that it will apply for Channel 253A at San Carlos Park, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). Petitioner recognizes that the Commission prohibits the removal of a community's sole local transmission service, except "in rare circumstances where removal of a local service might serve the public interest." 5 FCC Rcd at 7096. Petitioner claims that removal of Sanibel's sole local transmission service is warranted here.

3. Petitioner states that the reallotment of Channel 253A would provide San Carlos Park, a community of 11,785 persons,[1] with its first local transmission service, whereas it is currently impossible to provide any service at Sanibel, a community of 5,468. Petitioner notes that it has been attempting to construct and operate Station WRWX(FM) at Sanibel since September 1988. However, petitioner argues, various federal, state and local authorities have objected to petitioner's proposed transmitter sites. Petitioner states that local zoning ordinances prohibit construction of a tower on Sanibel Island, where Sanibel is located. The site petitioner originally specified in a 1983 application (BPH-830217AI) for the Sanibel allotment has been declared as environmentally sensitive wetlands and is no longer available, and the city of Sanibel has purchased surrounding property as a conservation area. No other site is available on Sanibel Island or nearby Pine Island for construction of a new tower. Operation from an existing tower on Pine Island or the mainland is not possible because of short-spacing or other technical concerns. Petitioner states that she attempted to use a directional antenna for a site on Pine Island to avoid the short-spacing, but the proposed tower would be located near a bald eagle's nest. As a result, the Florida Game and Fresh Water Commission rejected the proposed tower. Petitioner claims that attempts to reach a compromise were unsuccessful. As a consequence, petitioner has never operated Station WRWX(FM) at Sanibel. On the other hand, petitioner claims that if the channel was reallotted to San Carlos Park, it could operate Station WRWX(FM) from an existing tower.

4. Petitioner states that San Carlos Park is a Census Designated Place located in Lee County, Florida. Petitioner states that San Carlos Park has its own fire department, sheriff's department, and two elementary schools. San Carlos Park has numerous community and civic organizations, including the San Carlos Civic Association, Kiwanis, Optimist and Rotary Clubs, and a VFW Post and Auxiliary. There are churches, child care centers, physicians, dentists, accountants, insurance, a real estate service, several banks, and other retail stores and restaurants. San Carlos Park is also served by three newspapers. Petitioner submits that a number of businesses identify themselves with the name of San Carlos Park. Petitioner states that all the indicia support a conclusion that San Carlos Park is a community.

5. An engineering analysis has determined that Channel 253A can be allotted to San Carlos Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) west,[2] in order to avoid a short spacing to Station WKGR(FM), Channel 254C, Fort Pierce, Florida.

6. We do not generally believe that the public interest is served by removing a community's sole local service merely to provide a first local transmission service to another community. While the removal of Channel 253A from Sanibel would remove that community's only local service, and provide a first local transmission service to San Carlos Park, petitioner has shown that it is unable to operate the station at Sanibel despite diligent efforts. Since Station WRWX(FM) has never been on the air, a change in community will not cause any disruption to existing service. Therefore, we believe the public interest would be

[1] Population figures are taken from the 1990 Census.

[2] The coordinates for Channel 253A at San Carlos Park are North Latitude 26-30-02 and West Longitude 81-54-16. This site is currently short-spaced to Station WCOO(FM), Channel 252A, Immokalee, Florida. Station WCOO was ordered to operate on Channel 221A in lieu of Channel 252A in MM Docket No. 88-608. In the event that petitioner's proposal is granted, we may withhold the grant of an authorization for petitioner to operate at the new community until Station WCOO is authorized to operate on Channel 221A. We will serve the licensee of Station WCOO with a copy of this *Notice*.

served by seeking comments on this proposal. We request comments on our tentative conclusion that a waiver of our restriction on removal of sole existing local transmission service is warranted in this instance.

7. As requested, we will propose to modify petitioner's construction permit for Station WRWX(FM) to specify San Carlos Park as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 253A at San Carlos Park or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

8. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Sanibel, Florida	253A	--
San Carlos Park, Florida	--	253A

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **March 20, 1992,** and reply comments on or before **April 6, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David G. O'Neil
Haley, Bader & Potts
2000 M Street, N.W., Suite 600
Washington, D.C. 20036-3374

11. IT IS FURTHER ORDERED That the Secretary of the Commission shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee of Station WCOO, (FM), as follows: Naples Radio Partners, Ltd. 21010 Center Ridge Road, Rocky River, OH 44116.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-317

In the Matter of

Amendment of Section 73.202(b),	RM-7854
Table of Allotments,	
FM Broadcast Stations.	
(Marshall, Minnesota)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 15, 1992; Released: January 28, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 6513 (1991), proposing the substitution of Channel 298C3 for Channel 296A at Marshall, Minnesota, and modification of the license for Station KBJJ(FM) to specify operation on the higher class channel. The *Notice* was issued in response to a petition filed by Paradis Broadcasting of Marshall, Inc. ("petitioner"). Petitioner filed comments reiterating its interest in Channel 298C3 at Marshall. No other comments were received.

2. We believe the public interest would be served by substituting Channel 298C3 for Channel 296A at Marshall, Minnesota, in order to provide the community with a second wide coverage area station. As indicated in the *Notice*, Channel 298C3 can be allotted to Marshall, Minnesota, consistent with the Commission's spacing requirements at petitioner's specified site 7.2 kilometers (4.5 miles) southwest of the community.[1] Although Channel 298C3 at Marshall is short spaced to the applications for Channel 297A, Sleepy Eye, Minnesota, it is fully spaced to the allotment site at Sleepy Eye. The applicants for Channel 297A, Sleeply Eye, will be permitted to amend their applications to specify new sites and will retain cut-off protection.[2] We will authorize a modification of petitioner's license for Station KBJJ(FM), Marshall, Minnesota, to specify operation on Channel 298C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Marshall, Minnesota	259C1, 298C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KBJJ(FM), Marshall, Minnesota, IS MODIFIED to specify operation on Channel 298C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Paradis Broadcasting of Marshall, Inc., licensee of Station KBJJ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the applicants for Channel 297A at Sleepy Eye, Minnesota.

Brown County Broadcasting, Inc. P.O. Box 368 New Ulm, Minnesota 56073 (BPH-911003MC)	Lynn Ketelsen 1440 Grace Avenue Willmar, Minnesota 56201 (BPH-911003MD)

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] The coordinates for Channel 298C3 are 44-24-37 and 95-51-43.

[2] Brown County Broadcasting, Inc. (BPH-911003MC) and Lynn Ketelsen (BPH-911003MD) will be served with a copy of this *Report and Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-299

In the Matter of

Amendment of Section 73.202(b),	RM-6696
Table of Allotments,	RM-6961
FM Broadcast Stations.	
(Lopez and Dushore, Pennsylvania)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 21, 1992; Released: January 28, 1992

By the Chief, Policy and Rules Division:

1. Before the Commission is a Petition for Reconsideration of the *Report and Order* in this proceeding, 5 FCC Rcd 2022 (1990), filed by Stewart C. West ("West").[1] The *Report and Order* denied a petition for rule making filed by Robin B. Thomas ("Thomas"), which proposed an allotment of Channel 233A to Lopez, Pennsylvania, and dismissed West's counterproposal for an allotment of Channel 233A to Dushore, Pennsylvania. No opposition or other reply comments were filed in response to West's petition for reconsideration.

BACKGROUND

2. This proceeding originated with a petition for rule making filed by Thomas proposing the allotment of Channel 233A to Lopez, Pennsylvania. In the *Notice* the Commission stated there was inadequate information in the petition regarding the community status of Lopez and requested Thomas to provide specific data to demonstrate that Lopez had the social, economic or cultural indicia to qualify it as a community for allotment purposes. Thereafter, West filed a timely counterproposal to the *Notice*, proposing the allotment of Channel 233A to Dushore, Pennsylvania, as a first local service.[2] Anita L. Clark ("Clark"), licensee of Station WKGV, Tioga, Pennsylvania filed opposing comments to the counterproposal.

3. The *Report and Order* dismissed the petition filed by Thomas for Lopez, Pennsylvania, due to Thomas' failure to provide sufficient information to allow a determination of community status for allotment purposes. The *Report and Order* also dismissed West's counterproposal for his failure to provide proof of service of the counterproposal on Thomas as required by Section 1.420 of the Commission's Rules.

Petition for Reconsideration

4. The petition for reconsideration filed by West contends that service was made on Thomas at the time of filing and that West's failure to provide proof of such service was inadvertent. West's petition contains a Certificate of Service from West and a Declaration from West's counsel verifying that service was made at the time the petition was filed. In addition, West attached an Addendum to the Certificate which states that, in subsequent conversations, Thomas acknowledged receipt of the petition. West also attached telephone records for this purpose. West requests that the Commission accept this late proof of service on Thomas as cure of this technical defect and that we then consider the counterproposal on its merits.

5. After the close of the comment period, West filed a letter with the Commission indicating a change in his address. In that letter, West states that he has semi-retired and that although he has moved out of state, he will participate in the development of the proposed station by means of assisting a community group which is interested in the allotment.

DISCUSSION

6. Section 1.420 of the Commission's Rules and Regulations requires that comments and counterproposals be served upon a petitioner for rule making by the party who is submitting those comments. Proof of service must be provided before action may be taken pursuant to those comments or counterproposal. Pursuant to Section 1.47(g), the Commission may allow proof of service to be supplied at any time, provided no party is materially prejudiced. After a review of the documents submitted by West, we believe that timely service of the counterproposal was made on Thomas. West has submitted a Certificate of Service, a Declaration by his counsel, as well as other records. Thomas was served with the petition, and its attachments verifying his receipt of service, and he has not challenged this information. We also are of the view that no party will be prejudiced by any action taken here only because there are no other parties participating in this proceeding. The proposal for Lopez was denied and that decision has not been challenged. There are no oppositions on file against the Dushore allotment proposal. We note that reconsideration would not have been necessary if West had provided the proof of service with the original counterproposal. However, West's submission of appropriate documentation, as well as the lack of prejudice, persuades us in this instance, to permit the proposed cure. We, therefore, accept West's correction of this technical defect and will now consider his counterproposal and subsequent correspondence.

7. One of the most basic requirements of a rule making proceeding for an FM allotment is a statement of interest in the channel to be allotted. The petitioner must state an interest in the channel, a present intention to apply for the channel if an allotment is granted, as well as an intention to promptly construct a station. Although West's counterproposal contains a clear expression of interest as described above, his subsequent letter indicates a change

[1] Public notice of the filing of West's petition was given on June 26, 1990, Report No. 1818.

[2] Public notice of the counterproposal was given on August 30, 1989, Report No. 1793.

of position. After careful review of West's letter, we find that he no longer has a bona fide interest in actually constructing an FM station on Channel 233A at Dushore, but rather, simply supports the possibility of an FM allotment to Dushore.[3] West's reference to a community group having an interest in the allotment is not a sufficient expression of interest for allotment purposes. The proponent of an allotment proposal, to be bona fide, must state a clear intention to apply for the channel and indicate a willingness to construct a station. Such statements may only be made by the party who holds that intent, and not on behalf of a party who has not come before the Commission to state its own intent. Although West states that a community group has an interest, neither he nor anyone from that group has expressed the intent to apply for a channel or construct a station if an allotment is made. Therefore, although the allotment to Dushore may be technically feasible, we must deny West's petition for reconsideration in so far as there is lack of a continuing expression of interest in the allotment.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That the petition for reconsideration filed on behalf of Stewart C. West is GRANTED in part and in all other respects DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Elizabeth Beaty, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[3] *See Columbia, Eldon and Centralia, Missouri*, 2 FCC Rcd 6512 (1987), *Llano and Kerville, Texas*, 4 FCC Rcd 7900 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-233

In the Matter of

Amendment of Section 73.202(b), RM-7743
Table of Allotments,
FM Broadcast Stations.
(Armijo, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 21, 1992; Released: January 28, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 4806 (1991), proposing the substitution of Channel 296C for Channel 296C2 at Armijo, New Mexico, and the modification of the license of Station KUCU(FM) (formerly KMYI) to specify operation on the higher class channel. KCST, Inc., licensee of Station KUCU(FM), timely filed supporting comments.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 296C at Armijo, New Mexico, because it would enable Station KMYI(FM) to provide an expanded coverage area FM service to the community. Channel 296C can be allotted to Armijo with a site restriction of 47.3 kilometers (29.4 miles) southeast of Armijo, at petitioner's specified site.[2] As stated in the *Notice*, the site restriction is necessary to avoid short-spacings to Stations KBOM(FM), Channel 294C1, Los Alamos, New Mexico, and KHFM(FM), Channel 242C, Albuquerque, New Mexico.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Armijo, New Mexico	296C

4. IT IS FURTHER ORDERED, That, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KCST, Inc., for Station KUCU(FM), Channel 296C2, IS MODIFIED to specify operation on Channel 296C, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission an application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KCST, Inc., licensee of Station KUCU(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Commission records show that consummation of the assignment of license of Station KUCU(FM) (BALH-910426EE) from Matteucci Broadcasting, Company, Inc. (the party who initiated this proceeding), to KCST, Inc. took place on July 3, 1991. KCST, Inc. properly filed a continuing expression of interest as requested in the *Notice*. *See* 6 FCC Rcd 4806 n. 1.

[2] Coordinates at petitioner's suggested site for Channel 296C are 34-41-46 and 106-24-17.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-257

In the Matter of

Amendment of Section 73.202(b),	RM-6299
Table of Allotments,	RM-6506
FM Broadcast Stations.	
(Kingsville and Ingleside, Texas)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 21, 1992; Released: January 28, 1992

By the Assistant Chief, Allocations Branch:

1. At the request of Riviera Broadcasting Company ("petitioner"), licensee of Station KNGV(FM) [formerly Station KODK(FM)],[2] the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 3179 (1988), proposing the substitution of Channel 224C2 for Channel 224A at Kingsville, and modification of its license for Station KNGV(FM) to specify operation on the higher power channel. Petitioner filed supporting comments reaffirming its intention to apply for Channel 224C2 if allotted to Kingsville. Roy E. Henderson, d/b/a Spanish Aural Services Company ("SASC") filed a counterproposal.[3] Petitioner filed a Motion for Extension of Time in which to file responsive comments to SASC's counterproposal and subsequently filed reply comments.

2. In its counterproposal SASC requests the allotment of Channel 223A to Ingleside, Texas, as the community's first local transmission service. In support of its request, SASC states that Ingleside is a community located north of Corpus Christi with a 1980 U.S. Census population of 5,436 persons. SASC adds that because of the assignment of a new U.S. Navy battleship group to the community, Ingleside's population should increase substantially.

3. In the *Notice*, we stated that the petitioner's proposed site restriction for Channel 224C2 at Kingsville, 28.2 kilometers (17.5 miles) east of the community was large. Therefore, petitioner was requested to demonstrate in its comments that it could provide city grade coverage to Kingsville from its proposed site. In response, petitioner states that Station KNGV(FM) can provide city grade service to Kingsville from its proposed site by using an antenna of 150 meters height above average terrain. In reply comments, petitioner suggests that Channel 297A could be allotted to Ingleside rather than Channel 224A, thereby permitting the accommodation of both proposals.

4. Based on the record before us, we believe that the public interest would be served by providing Ingleside with its first local FM service and Kingsville with an expanded FM radio service. Although SASC requested the allotment of Channel 223A to Ingleside, we believe the allotment of Channel 297A would best serve the public interest, since it would eliminate the technical conflict with the Kingsville upgrade. Channel 297A can be allotted to Ingleside without the imposition of a site restriction.[4] Channel 224C2 can be allotted to Kingsville with a site restriction of 28.2 kilometers (17.5 miles) east to avoid a short-spacing conflict with Station KQNN(FM), Channel 221A, Alice, Texas. Petitioner has demonstrated that city grade service will be provided to Kingsville from this site.[5] Since Kingsville and Ingleside are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been obtained for these allotments. Furthermore, because the proposed transmitter site for Station KNGV(FM) is located within 80 kilometers of the Federal Communications Commission's monitoring station at Kingsville, Texas, the licensee should refer to the provisions of Section 73.1030(c)(1)-(5) of the Rules governing protection of Federal Communications Monitoring Stations when filing its application. As proposed, we will also modify petitioner's license for Station KNGV(FM) to specify operation on Channel 224C2 in accordance with the provisions of Section 1.420(g) of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Kingsville, Texas	224C2, 248C1
Ingleside, Texas	297A

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Bruton Broadcast Communications,

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[1] The community of Ingleside, Texas, has been added to the caption.

[2] An assignment of license for Station KNGV(FM) to Jefco Enterprises, Inc. (now Bruton Broadcast Communications, Inc.), was granted March 14, 1990, and consummated on March 30, 1990.

[3] Public Notice of the counterproposal was given on September 13, 1988, (Report No. 1748). A component of SASC's counterproposal is unacceptable for rule making and was not placed on public notice. SASC requested the substitution of Channel 224C2 for Channel 224A at South Padre Island, Texas. However, the requested allotment of Channel 224C2 at South Padre Island at SASC's proposed coordinates (26-06-05 and 97-13-36) would be short-spaced to vacant Channel 226A, Matamoros, Tamaulipas, Mexico, in violation of Commission Rule 73.207(b)(3). Therefore, this part of SASC's counterproposal has not been considered herein.

[4] The coordinates for Channel 297A at Ingleside are North Latitude 27-52-54 and West Longitude 97-12-42. Since the petition which resulted in this allotment was filed prior to October 2, 1989, we have received concurrence from the Mexican government for this channel as a 3 kilowatt Class A station.

[5] The coordinates for Channel 224C2 at Kingsville are North Latitude 27-33-00 and West Longitude 97-35-00.

Inc., for Station KNGV(FM), Kingsville, Texas, IS MODIFIED to specify operation on Channel 224C2, in lieu of Channel 224A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. The filing window for Channel 297A at Ingleside, Texas, will open on **March 16, 1992,** and close on **April 15, 1992.**

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-442

In re Applications of

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT — File No. BPED-860624MC

ARIZONA BOARD OF REGENTS FOR ARIZONA STATE UNIVERSITY — File No. BPED-870626MC

For a Construction Permit for a New Noncommercial Educational Broadcast Station, Channel 208A, Phoenix, Arizona

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 1992; Released: January 28, 1992

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Board has before it the Joint Motion For Approval of Settlement Agreement, filed January 2, 1992, and an accompanying Petition For Leave To Amend filed that same date by the captioned parties. Under the settlement, Arizona State University shall dismiss its application, become a party to the Maricopa County Community College District application, and operate the station cooperatively under a Joint Policy Planning Committee. The Commission's Mass Media Bureau, on January 15, 1992, filed comments in support of the Joint Motion.[1]

2. In exordium, both parties had filed exceptions to the *Initial Decision*, 5 FCC Rcd 4081 (1990), of Administrative Law Judge Richard L. Sippel, who could find no rational basis on which to favor one institution over the other and ordered the applicants to share the frequency, each using the spectrum on alternate days.

3. At oral argument, the Board posited operation by a mutual authority, a proposal it promulgated by *Memorandum Opinion and Order*, 5 FCC Rcd 7614 (1990). Because of the need to overcome certain institutional and legal impediments to such an operation, the parties sought and received several extensions of time to accommodate their concerns. On November 19, 1991, the parties filed a status report indicating that the Arizona State Board of Regents would take up the matter on its Consent Agenda of December 6, 1991, and, if approved, a joint motion would be filed January 2, 1992. It has been.

4. Under the agreement, the construction permit would be issued to both applicants, jointly, and[2]:

> Pursuant to the Agreement, overall station policies and planning will be jointly administered by MCCCD and ASU through a Joint Policy Planning Committee composed of (1) the General Manager of KAET-TV, Phoenix, Arizona, licensed to ASU, (2) the ASU Vice President for University Relations, (3) the General Manager of KJZZ(FM), Phoenix, Arizona, licensed to MCCCD, and (4) the President of Rio Salado Community College District, which is one of seven community colleges operated under the auspices of MCCCD.

Further[3]:

> The routine day-to-day affairs of the station will be managed by MCCCD. Both educational institutions will contribute noncommercial educational programming to the station in compliance with Section 73.503 of the Commission's rules. The station's format will consist primarily of fine arts oriented musical programming, as well as news, public affairs and informational programming of local, regional and national scope.

5. The Board is further informed[4]:

> Both MCCCD and ASU have for many years held separate licenses for noncommercial educational broadcast stations. Both stations have received funding from the Corporation for Public Broadcasting and the National Telecommunities Information Administration, and both have received numerous awards for outstanding public broadcast service. Both institutions have demonstrated an understanding and commitment to operating public broadcast stations on a non-profit noncommercial educational basis.

6. By virtue of the proposed amendment, the applications before us are no longer mutually exclusive; and, like the Mass Media Bureau, the Board finds no basis upon which to reject the settlement or the amendment. Moreover, the settlement will surely serve the public interest by terminating the litigation that commenced in 1987, restoring a fine arts radio service to Phoenix, and assuring that students at both institutions have the opportunity to avail themselves of the facility.[5]

7. ACCORDINGLY, IT IS ORDERED, That the petitions for leave to amend filed July 26, 1990 and May 3 and September 17, 1991, respectively, by Arizona Board of Regents For Arizona State University ARE GRANTED; and the amendments ARE ACCEPTED; that the petition for leave to amend filed on November 20, 1990 by Maricopa County Community College District IS GRANTED, and the amendment IS ACCEPTED; and that the petition for leave to amend filed January 2, 1992 by Maricopa County Community College District IS GRANTED, and the amendment providing for representatives of both institutions to serve on a joint planning committee which will establish overall station policies and plans IS ACCEPTED; and

8. IT IS FURTHER ORDERED, That the Joint Motion For Approval of Settlement Agreement, filed on January 2, 1992 by Arizona Board of Regents For Arizona State University and Maricopa County Community College Dis-

trict IS GRANTED; that the attached settlement agreement IS APPROVED; that the application of Arizona Board of Regents For Arizona State University (File No. BPED-870626MC) IS DISMISSED; that the application of Maricopa County Community College District (File No. BPED-860624MC), as amended, IS GRANTED; and that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] The Board had informally requested the Bureau to examine the amended application to ensure technical compliance. It has done so very promptly, and notes that the parties propose to utilize the technical proposal made in the application of Maricopa County, a proposal previously reviewed at the application stage.

[2] Petition For Leave to Amend, Exh. 1 at 1.

[3] *Id.*

[4] *Id.*, at 2.

[5] The public interest is also served by the commendable conduct and intelligent labor of counsel for both parties, without whose dedicated effort this agreement would not have come to fruition. Their endeavors were in the highest and best traditions of the profession, and very clever as well. *See, e.g.*, Intergovernmental Agreement (most especially, nondiscrimination, para. 5; dispute resolution, para. 7; annual plan, para. 14; independent operation, para. 18; audits, para. 19; right of first refusal, para. 3). The Board, and the Commission we are certain, appreciate the cooperation of both parties and the quality of the work of counsel.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 3777
Tariff F.C.C. No. 12

ORDER

Adopted: January 21, 1992; Released: January 21, 1992

By the Chief, Common Carrier Bureau:

1. On January 8, 1992, AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective January 22, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined review procedures for certain tariff filings. This filing modifies Option 99 of Virtual Telecommunications Network Service (VTNS) by adding outage unit credits for T45 DTCs and "correct[ing] the percentage which is used to determine the minimum required number of 1.5 Mbps DTC access components." AT&T Tr. No. 3777, Letter of Transmittal.

2. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3777. We conclude that this transmittal must be rejected because these revisions substantially change Option 99, which includes inbound service, and are therefore inconsistent with the Commission's decision in CC Docket No. 90-132 to prohibit any further bundling of inbound services in Tariff 12 packages and in contract-based tariffs.[2]

3. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3777, IS REJECTED.

4. IT IS FURTHER ORDERED that American Telephone and Telegraph Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material and reinstating currently effective material. These revisions shall be scheduled to become effective on not less than one day's notice. For this purpose, Special Permission No. 92-48 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, *Report and Order*, FCC 91-251, 6 FCC Rcd 5880 (1991) (*IXC Order*), *reconsidered in part*, Memorandum Opinion and Order, FCC 91-390, Mimeo 38289, (released Nov. 25, 1991), *further recon. pending*.

[2] *See* American Telephone and Telegraph Company, Transmittal No. 3375, DA 91-1577 (Com.Car.Bur.) (released Dec. 19, 1991) at para. 11.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications
Tariff F.C.C. No. 12 Transmittal No. 3778

ORDER

Adopted: January 21, 1992; Released: January 21, 1992

By the Chief, Common Carrier Bureau:

1. On January 8, 1992, AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective January 22, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined review procedures for certain tariff filings. This filing modifies Option 80 of Virtual Telecommunications Network Service (VTNS) by allowing the customer to increase the Minimum Annual Charge and establish a new multi-year service period. The filing also modifies the Domestic Usage Volume Pricing Plan to include additional discounts which would apply if the customer increases the Minimum Annual Charge.

2. MCI Telecommunications Corporation and Williams Telecommunications Group filed petitions to reject the captioned tariff revisions, US Sprint Communications Company Limited Partnership filed a petition to reject or alternatively suspend and investigate, and the Competitive Telecommunications Association filed a petition to reject or, in the alternative, suspend and investigate Transmittal No. 3778 on January 15, 1992.

3. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3778 and the appropriate pleadings. We conclude that this transmittal must be rejected because these revisions substantially change Option 80, which includes inbound service, and are therefore inconsistent with the Commission's decision in CC Docket No. 90-132 to prohibit any further bundling of inbound services in Tariff 12 packages and in contract-based tariffs.[2]

4. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3778, IS REJECTED.

5. IT IS FURTHER ORDERED that the petitions to reject American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3778 filed by MCI Telecommunications Corporation and Williams Telecommunications Group, the petition to reject or alternatively suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3778 filed by US Sprint Communications Company Limited Partnership, and the petition to reject or, in the alternative, suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3778 filed by the Competitive Telecommunications Association ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

6. IT IS FURTHER ORDERED that American Telephone and Telegraph Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material and reinstating currently effective material. These revisions shall be scheduled to become effective on not less than one day's notice. For this purpose, Special Permission No. 92-49 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, *Report and Order*, FCC 91-251, 6 FCC Rcd 5880 (1991) (*IXC Order*), *reconsidered in part*, Memorandum Opinion and Order, FCC 91-390, Mimeo 38289, (released Nov. 25, 1991), *further recon. pending*.

[2] *See* American Telephone and Telegraph Company, Transmittal No. 3375, DA 91-1577 (Com.Car.Bur.) (released Dec. 19, 1991) at para. 11.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 3779
Tariff F.C.C. No. 12

ORDER

Adopted: January 21, 1992; Released: January 21, 1992

By the Chief, Common Carrier Bureau:

1. On January 8, 1992, AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective January 22, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined review procedures for certain tariff filings. This filing modifies Option 3 of Virtual Telecommunications Network Service (VTNS) by (1) reinstating Type I Authorization Code calling capabilities; (2) modifying Rate Schedule I calling capabilities; (3) modifying the Call Rating Matrix to reflect the additional calling capabilities and (4) making minor textual changes.

2. MCI Telecommunications Corporation filed a petition to reject the captioned tariff revisions. US Sprint Communications Company Limited Partnership filed a petition to reject or alternatively suspend and investigate, and the Competitive Telecommunications Association filed a petition to reject or, in the alternative, suspend and investigate Transmittal No. 3779 on January 15, 1992.

3. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3779 and the appropriate pleadings. We conclude that this transmittal must be rejected because these revisions substantially change Option 3, which includes inbound service, and are therefore inconsistent with the Commission's decision in CC Docket No. 90-132 to prohibit any further bundling of inbound services in Tariff 12 packages and in contract-based tariffs.[2]

4. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3779, IS REJECTED.

5. IT IS FURTHER ORDERED that the petition to reject American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3779 filed by MCI Telecommunications Corporation, the petition to reject or alternatively suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3779 filed by US Sprint Communications Company Limited Partnership, and the petition to reject or, in the alternative, suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3779 filed by the Competitive Telecommunications Association ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

6. IT IS FURTHER ORDERED that American Telephone and Telegraph Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material and reinstating currently effective material. These revisions shall be scheduled to become effective on not less than one day's notice. For this purpose, Special Permission No. 92-50 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, *Report and Order*, FCC 91-251, 6 FCC Rcd 5880 (1991) (*IXC Order*), *reconsidered in part*, Memorandum Opinion and Order, FCC 91-390, Mimeo 38289, (released Nov. 25, 1991), *further recon. pending*.

[2] *See* American Telephone and Telegraph Company, Transmittal No. 3375, DA 91-1577 (Com.Car.Bur.) (released Dec. 19, 1991) at para. 11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-268

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

ORDER

Adopted: January 17, 1992; Released: January 17, 1992

Reply Comment Date: January 31, 1992

By the Acting Chief, Mass Media Bureau:

1. The EIA/ATV Committee (EIA) requests a six-week extension of the deadline for submission of reply comments in this proceeding, from January 20, 1992, to March 2, 1992. EIA argues that extraordinary circumstances justify its request.[1]

2. EIA states that this is an unusually important and complex docket with profound decisional effects. EIA contends that the deadlines established in the *Notice of Proposed Rulemaking* are "quite brief," permitting 42 days for comments and 31 days for replies. EIA claims that the reply period also coincides with a consumer electronics show, which is the electronics industry's biggest annual event. It states that preparation of reply comments is further complicated by the number and length of first-round comments, in which over 50 pleadings were filed by about 150 individuals and organizations.

3. EIA believes that its request will not prejudice the rights of other parties or impede the development of ATV technology or the testing of ATV systems. It states that the Commission would likely benefit should an allowance of additional time lead to increased quality in reply pleadings or to development of an intra- or inter-industry consensus.

4. As EIA concedes, motions for extension of time are not routinely granted.[2] While the circumstances which EIA describes do not justify a six-week postponement of the reply deadline, they do merit some allowance. This is a significant and complex docket. The large record generated by the comments raises numerous complicated and technical issues. A moderate extension will help interested parties to address these issues in greater depth and may, as EIA suggests, facilitate industry consensus on contentious questions.

5. Accordingly, in response to the Motion of the EIA/ATV Committee for Extension of Time, and pursuant to Sections 4(j) and 5(c) of the Communications Act, 47 U.S.C. §§ 154(j) and 155(c), and the authority delegated thereunder pursuant to 47 C.F.R. §§ 0.61 and 0.283, the time for filing reply comments in this proceeding IS HEREBY EXTENDED until **January 31, 1992.**

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Acting Chief
Mass Media Bureau

[1] Motion of the EIA ATV Committee for Extension of Time (filed Jan. 13, 1992).

[2] 47 C.F.R. § 1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Pactel Paging of California — File No. 29414-CD-P/ML-89

For facilities in the Public Land Mobile Service at Desert Hot Springs, Santa Ynez, Palmdale, Wrightwood and San Diego, California for Station KNKJ924

ORDER ON RECONSIDERATION

Adopted: January 21, 1992; Released: January 27, 1992

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. The Commission has before it a Petition for Reconsideration (Petition) filed by PacTel Paging of California (PacTel), on March 25, 1991. Pactel seeks reconsideration of a partial denial of the captioned application that was filed by its predecessor in interest, Gencom Incorporated (Gencom) on May 22, 1989.[1] The Pactel application proposed to add a new 931 MHz paging frequency to operate from five locations in Southern California, including Desert Hot Springs, Santa Ynez, Palmdale, Wrightwood and San Diego, California.[2] Pactel expressed a preference for frequency 931.7375 MHz. The Desert Hot Springs and Santa Ynez locations were granted for frequency 931.9625 MHz, and the San Diego location, for 931.3625 MHz. The other two locations were denied all together. No oppositions to Pactel's Petition were filed.

II. BACKGROUND

2. Frequency 931.7375 MHz was formerly licensed to Paging Dimensions, Inc. (Paging Dimensions), call sign KNKJ433. The authorization was due to expire April 1, 1989. *See* 47 C.F.R. §22.45. Paging Dimensions filed an application to renew on March 1, 1989; and on May 17, 1989, the application was listed as acceptable for filing.[3] Subsequently, Paging Dimensions informed the Commission that it no longer sought renewal of its license for frequency 931.7375 MHz.[4] Accordingly, the Mobile Services Division (MSD) dismissed Paging Dimension's renewal application without prejudice.[5]

3. There were several applications, besides Pactel's, filed for the available 900 MHz paging spectrum in Southern California. Because there were more applicants than there were frequencies available, the Commission announced that it would hold a lottery. *See* Public Notice, Mimeo No. 2059 (released March 6, 1990). In the lottery, the Pactel application ranked third. *See* Public Notice, Mimeo No. 2691 (released April 13, 1990). The MSD granted Pactel's application, in part, on February 20, 1991.[6] The MSD stated that frequencies were available for assignment at Desert Hot Springs, Santa Ynez and San Diego, California locations, but were not available for assignment at the Palmdale and Wrightwood, California locations. Accordingly, the applications for those locations were denied. The Commission announced the grant of 900 MHz frequencies to Pactel as follows:[7]

Desert Hot Springs	931.9625 MHz
San Diego	931.3625 MHz
Santa Ynez	931.9625 MHz

III. DISCUSSION

4. PacTel asserts that additional 931 MHz frequencies, including 931.7375 MHz, were available in making assignments to applicants included in the Southern California lottery. Pactel also asserts that it should be granted a common frequency at all of its proposed locations.

5. Pactel argues that since the MSD dismissed the renewal application of Paging Dimensions for station KNKJ433 at the licensee's request, the license for frequency 931.7375 MHz expired by its own terms, April 1, 1989, when the license was originally scheduled to terminate.[8] We agree. Since PacTel's application postdated the expiration date of the authorization for this frequency, the frequency 931.7375 MHz was available for assignment. In addition, the Commission found other frequencies available for the first two ranked applications. We therefore conclude that frequency 931.7375 MHz was available and should have been granted to PacTel for its five locations proposed.[9] Such a grant would serve the public interest.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that the Petition for Reconsideration of PacTel Paging of California, filed March 25, 1991, is granted to the extent indicated herein.

7. IT IS FURTHER ORDERED that the application of Pactel Paging of California, File No. 29414-CD-P/ML-89, is GRANTED and frequency 931.7375 MHz is assigned at Desert Hot Springs, Santa Ynez, Palmdale, Wrightwood and San Diego, California.

8. IT IS FURTHER ORDERED that the grants to PacTel Paging of California for authority to operate on frequency 931.9625 MHz at Desert Hot Springs and Santa Ynez, and on frequency 931.3625 MHz at San Diego, are RESCINDED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] The Commission approved the *pro forma* assignment of Station KNKJ924, and all associated applications, application File No. 31107-CD-AL-1-89, from Gencom to PacTel. *See* Public Notice, Report No. PMS-89-52-A (released September 27, 1989).

[2] The application also sought an additional location on the frequency 931.0625 MHz at McKittrick, California. PacTel subsequently requested and received authority to add the McKittrick site to Station KMB305 in Northern California. *See* FCC File No. 20587-CD-P-89, as modified by FCC Form 489 (filed August 18, 1989). As a result, Pactel is not continuing to prosecute the McKittrick location as part of the captioned application.

[3] *See* Public Notice, Report No. PMS-89-33 (released May 17, 1989).

[4] *See* Letter from Robert J. Keller, counsel for Paging Dimensions, to Chief, Mobile Services Division (MSD), (August 31, 1989).

[5] *See* Letter from Chief, MSD, to Robert J. Keller, counsel for Paging Dimensions (September 20, 1989). On July 14, 1989, Gencom filed an Informal Objection against Paging Dimension's renewal application. In its responsive pleading, Paging Dimensions said that it conceded that it was not operating station KNKJ433. *See* Letter from Robert J. Keller, counsel for Paging Dimensions, to Chief, MSD (August 31, 1989). The MSD's action rendered Gencom's pleading moot. *See* September 20, 1989 letter, from Chief, MSD. Also, *see* note 8, *supra*.

[6] *See* Letter from Chief, MSD, to Carl W. Northrop, Counsel for Gencom (February 20, 1991).

[7] *Public Notice*, Report No. PMS-91-21-A (released February 20, 1991).

[8] *See* 47 C.F.R. § 22.45. Because the license expired on its own terms, April 1, 1989, the provision of the Administrative Procedure Act affording a licensee continuation of its license until the renewal application has been finally determined by the Commission no longer applies. *See Atlantic Richfield Co. v. United States*, 774 F.2d 1193 (D.C. Cir. 1985); 5 U.S.C. § 558(c); 47 C.F.R. § 1.62(a)(1).

[9] We find that we can grant the relief that Pactel seeks as to its proposed Southern California locations without reaching the issue Pactel raises involving the New York lottery proceeding. *See Public Mobile Services Lottery*, 5 FCC Rcd 7430 (Com. Car. Bur. 1990), *application for review pending*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

PREMIER BROADCASTING, INC. File No. BPH-860102NK

For a Construction Permit
for a New FM Station on Channel 225A
in Montecito, California

MEMORANDUM OPINION AND ORDER

Adopted: January 2, 1992; Released: January 28, 1992

By the Commission:

1. The Commission has before it a petition for reconsideration filed by Premier Broadcasting, Inc. ("Premier") on October 16, 1987, of an action by the Chief, Audio Services Division which dismissed Premier's application and designated for comparative hearing seventeen other mutually exclusive applicants for the subject Montecito allotment. *LNJ Communications*, 2 FCC Rcd 6072 (Aud. Serv. Div. 1987).

2. At the time of filing of the instant application on January 2, 1986, Premier principal Frederica Yamin (Vice President, Treasurer, Director, and 50% stockholder) was also Vice President, Treasurer, Director and 50% voting stockholder of South Coast Radio, Inc. (South Coast), which earlier had filed an application on July 12, 1985 for a new FM station on Channel 233B, Ellwood, California (File No. BPH-850712GU). Although South Coast's application had been returned for an unrelated matter on August 20, 1985, a subsequent petition for reconsideration was filed and the application was reinstated *nunc pro tunc* on January 14, 1987. The predicted 1.0 mV/m contours of Premier's Montecito proposal and South Coast's Ellwood proposal substantially overlapped, in violation of 47 C.F.R. § 73.3555(a), the Commission's multiple ownership rules.[1] No waiver of the multiple ownership rules was ever requested by Premier or South Coast.[2] The staff, citing *Big Wyoming Broadcasting Corp.*, 2 FCC Rcd 3493, 3495 n. 10 (1987) and the *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19,936 (May 13, 1985) (*"Report and Order"*),[3] concluded from the above facts that Premier's application had been inconsistent with the reinstated *nunc pro tunc* South Coast proposal in violation of 47 C.F.R. § 73.3518,[4] and it was accordingly dismissed. 2 FCC Rcd at 6074.

3. In its petition for reconsideration, Premier argues that: (i) the Premier and South Coast applicants were not under "common control" and thus there was no violation of Section 73.3518; (ii) the South Coast application was not "pending" when the Premier application was filed; (iii) the instant situation is distinguishable from and therefore not controlled by *Big Wyoming;* (iv) South Coast had been "entrapped" because its application, which was ultimately dismissed for violation of the Commission's spacing rules,[5] should never have been accepted by the staff; therefore no violation of Section 73.3518 should have been found; and (v) in any event, Mrs. Yamin should have been permitted to elect which proposal to prosecute, in accordance with Commission precedent. Each of these arguments will be considered in turn.

4. We believe it appropriate to begin with Premier's argument that South Coast's Ellwood application was not "pending and undecided" when the Montecito application was filed, and, therefore, no violation of Section 73.3518 occurred. Premier states that, when its Montecito application was filed, the South Coast application was dismissed. The filing of a petition for reconsideration, claims Premier, "hardly serves to resurrect an application to 'pending' status before the Commission, as is evidenced by the well-established principle that a dismissed applicant is unable to invoke standing for purposes of filing a petition to deny," citing *Mahaffey Message Relay, Inc.*, 74 FCC 2d 518 (1979). Petition, at 4.[6]

5. The staff returned the South Coast application on August 20, 1985, more than three months before the instant Montecito application was filed. However, at the time of filing, South Coast had on file a petition for reconsideration of that action. We therefore believe that the South Coast application was properly considered "pending and undecided" for purposes of the inconsistent application rules.[7] As discussed more fully below, the

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[1] The multiple ownership rules were subsequently modified to prohibit overlap of the "principal city" or 3.16 (70 dBu) contours. *First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1723 (1989).

[2] Several months after reinstatement of the South Coast application, South Coast amended its application to report that on March 2, 1987, Frederica Yamin had divested her interest in South Coast.

[3] The *Report and Order* is reprinted at 58 RR 2d 776 (1985).

[4] Section 73.3518 reads, in pertinent part, as follows: "While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee."

[5] *See Letter to Frederica S. Yamin*, reference 8920-GDJ, (Chief, FM Branch, April 6, 1987).

[6] Premier's reliance on *Mahaffey* is misplaced. In that case, a hearing proceeding, the application of Memphis Mobile Telephone (MMT) was dismissed with prejudice at the applicant's request. The presiding Administrative Law Judge then rejected MMT's request to remain a party to (but not be required to attend or participate in) the proceeding. MMT appealed this holding but did not appeal the dismissal of its application, and the Commission held that "since MMT's application has been dismissed it no longer has standing as a competing applicant." *Id.* at 521. The case does not speak to dismissed applicants seeking to retain through appeals their standing as *applicants*.

[7] We note that pursuant to 47 C.F.R. §§ 1.65(a) and 73.3525(h), an application is considered "pending" before the agency for purposes of amendment or settlement until a grant or denial of that application is no longer subject to reconsideration or judicial review. Thus, the obligation of an applicant to keep its application updated and the right of an applicant to participate in a settlement (and thus eliminate the expenditure of Commission resources in resolving mutually exclusive situations) attach even if the underlying application has been dismissed, so long as a timely appeal of that action is pending. *See also* 47 U.S.C. §§ 311(c)(4) and (d)(4) (for purposes of settlement agreements, applications are pending until grant or denial no longer subject to reconsideration or judicial review).

purpose of the inconsistent application rule is to prevent expenditure of limited staff resources processing two applications which cannot both be granted. *See, e.g., KKAP Broadcasting Co.*, 38 RR 2d 752 (1976). In light of this purpose, we see no relevant distinction between applications which have been returned and are on appeal and other types of pending applications.[8] Even were we not to apply this analysis, however, grant of the South Coast petition for reconsideration returned its application to "pending and undecided" status *nunc pro tunc* its original file date (July 12, 1985), thereby making the later-filed pending Montecito application "inconsistent," in violation of 47 C.F.R. § 73.3518. In neither application, nor in any subsequent pleading, did the applicant either propose to cure the inconsistency which would arise upon grant of its petition for reconsideration or request waiver of the inconsistent application rule.[9]

6. Likewise, we reject Premier's argument that it was "entrapped" by staff error which gave rise to the inconsistent application rule violation only upon the staff's erroneous reinstatement *nunc pro tunc* of an application which was later found to be unacceptable for filing. This argument ignores the fact that the processing of applications involves a series of different types of staff reviews performed at different times. The South Coast application was initially returned as untenderable, after a tenderability study, because the applicant failed to include a proper 7.5-minute topographic site map. However, it was ultimately reinstated *nunc pro tunc* after the Commission, in *FM Transmitter Site Map Submission Required by FCC Forms 301 and 430*, 1 FCC Rcd 381 (1986) held that the map requirement had not been properly published in the *Federal Register* and directed the staff to reinstate those applicants whose applications had been returned for failure to comply with the topographic site map requirement and who had preserved their right of appeal. Thereafter, pursuant to the "hard look" processing rules adopted in the *Report and Order*, a second study was performed to determine whether or not the application complied with our technical acceptance criteria. It is only at that stage of processing that the appropriate study is made to determine whether or not an application complies with our spacing rules. The fact that the South Coast application was later discovered to have a fatal defect -- in this case, the failure to comply with 47 C.F.R. § 73.207 -- hardly supports a conclusion of FCC "entrapment."

7. Premier further contends that the Premier and South Coast applications were not under "common control," and thus did not fit within the purview of Section 73.3518, that the instant case is distinguishable from *Big Wyoming*, and that in any event Mrs. Yamin should have been entitled to elect which application she would pursue, citing *Everett C. Pease, Jr.* 60 FCC 2d 1087 (1976) and *Port Arthur College*, 9 RR 219, 225 (1953). Premier claims that the evidence here indicates that Mrs. Yamin did not "control" South Coast, since its application was ultimately amended to exclude her. Indeed, states Premier,

> in *Everett C. Pease, Jr.*, 60 FCC 2d at 1089, the Commission relied heavily on the eventual ouster of an individual in concluding that he was not in control notwithstanding a 50% voting ownership interest. Therefore, Mrs. Yamin cannot be said to have controlled the Premier and South Coast applications, either as a matter of fact or as a matter of law.

Petition, at 5. Moreover, claims Premier, the factual setting in *Big Wyoming*, relied upon by the staff in returning the Montecito application, is readily distinguishable from that presented here; in *Big Wyoming*, the 100% owners of one applicant which at no time was dismissed or in an otherwise non-pending status, controlled 90% of the stock of a second, mutually exclusive application. This, claims Premier, indisputably constituted common control and a violation of Section 73.3518. Petitioner contends that the same cannot be said for Premier and South Coast.

8. We realize that, in the pre-"hard look" cases cited by Premier, applicants were permitted to file inconsistent applications which would violate the multiple ownership rules so long as the common principal held less than a majority of the voting stock in the prior-filed application. That person was then permitted by the staff to elect to withdraw from either application. However, in order to deal effectively with the many thousands of FM applications filed after we allotted 689 new FM channels in BC Docket 80-90, the Commission found this election policy not to be in the public interest and in conflict with our present "hard look" processing objectives.

9. In Paragraph 24 of the *Report and Order*, we stated that:

> As an additional component of our "hard look" approach, we reiterate our position with respect to multiple applications. Applicants will not be permitted to "flood the Commission's processing line and hearing docket with multiple applications, many of which could not be granted under our multiple ownership rules." *Storer Broadcasting Co.* 43 FCC 1254, 1256 (1953). Accordingly, we shall regard Section 73.3555 as establishing the maximum number of applications acceptable for filing by an applicant. Applications tendered in excess of this number shall be considered inconsistent with Section 73.3518 and returned as unacceptable for filing. In this regard, we note that stations in which the applicant currently holds a *cognizable interest* would be taken into account in determining the maximum number of acceptable applications. (footnote omitted)

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[8] The Commission's Review Board has held that an applicant is not a "party" for the limited purpose of granting a request to intervene in an ongoing hearing proceeding while the staff dismissal of its application is on appeal. *See Denton FM Radio, Ltd.*, 58 RR 2d 265 (Rev. Bd. 1985). That decision does not affect whether the application is still considered pending for other purposes.

[9] In *Comark Television, Inc.*, 51 RR 2d 738, 742 (1982), a case published several years before either the Ellwood or Montecito application was filed, the Commission noted that, in situations concerning a group of applications "which cannot all be granted consistent with our multiple ownership rules," applicants "should address *in their applications* [such] situations... by proposing how compliance with the multiple ownership rules will be ensured." (emphasis added) This was not done by either Premier or South Coast.

50 Fed. Reg. at 19,940 (emphasis added). It was our stated purpose to apply the above policy to all situations embodied in Section 73.3555, of which the signal overlap provisions are clearly a part.[10]

10. The reasoned analysis for all changes made under the "hard look" processing system has been often stated:

> First, the reduction of frivolous and speculative applications will enable [the Commission] to expedite the processing of applications tendered to serious candidates who are "ready, willing and able" to rapidly bring service to the public. Secondly, streamlining our processing procedures will minimize the Commission's administrative costs, enabling us to make more efficient use of our limited staff and other resources. These benefits are critical to making the window filing and "first come/first serve" process work smoothly and with minimal delay in processing large numbers of applications. *Report and Order*, 50 Fed. Reg. at 19940.

Star Signal Corporation, 1 FCC Rcd 450, 451 (1986).[11] Processing applications which are not grantable under our multiple ownership rules when filed and, thereafter, requiring the staff to write deficiency letters permitting principals to withdraw from such applications is not consistent with the "hard look" system's goals.

11. Under our current attribution standards set forth in Section 73.3555 of the Rules, *see Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *reconsidered in part*, 58 RR 2d 604 (1985), *further reconsidered*, 1 FCC Rcd 802 (1986), Premier and South Coast held a cognizable interest in each other due to Yamin's interests in each. As paragraph 24 of the "hard look" *Report and Order* makes clear, it is the presence of such cognizable interests that triggers applicability of the inconsistent application rule, or, to state the matter somewhat differently, applicants are considered the "same" for purposes of the inconsistent application rule if the applicants hold interests in each other cognizable under the multiple ownership rules. We realize that, under the pre-"hard look" policy discussed in *Big Wyoming* and the cited cases, the Commission accepted for filing applications violative of the multiple ownership rules so long as the common party held less than a controlling interest in the prior-filed application. That party would then be given an opportunity to withdraw from that application. *See, e.g., Comark Television, Inc.*, 51 RR 2d 738 (1982). That "election" policy was clearly overruled by the "hard look" *Report and Order*, which stated that such applications would be considered unacceptable for filing. The Commission's prior "election" policy was, in fact, a waiver of the inconsistent application rule (which applies only to the latter-filed application) and such waiver thereby permitted a common principal to choose to remain in either of the two conflicting applications. In past inconsistent application cases, the Commission has weighed the legal and equitable arguments favoring election against the waste of Commission resources, prejudice to other applicants and/or delay of service to the public which results from the processing of multiple applications which cannot all be granted and has permitted an election. *See, e.g., Valley Broadcasting Co.*, 58 RR 2d 945 (1985), and *Comark Television, Inc., supra*. The "hard look" processing system enunciated in the *Report and Order* altered this balance.[12] The agency cannot fulfill the objectives underlying the "hard look" processing system if it must write letters explaining and offering election to principals of applicants who violate the multiple ownership rules. It would appear, however, that Premier would have us do precisely that.

12. *Big Wyoming* did not purport to interpret the "hard look" processing standards vis-a-vis the Commission's past election policy. Rather, *Big Wyoming* spoke only to policies which were in effect at the time (1983) of the filing of the applications in that case. *Big Wyoming* did, however, set forth the Commission's policy with respect to applications which are found to be inconsistent: the latter-filed application will be dismissed.[13] In *Big Wyoming*, as here, the applications were found to violate the inconsistent application rule because of impermissible duopoly overlap, and the latter-filed application was dismissed.

13. Premier raises one final argument with respect to *Big Wyoming*. That case was released on June 11, 1987, after the South Coast and Premier applications had been filed. "In every previous case," claims Premier, the Commission permitted election. Petition, at 8. We disagree with this assessment. *Big Wyoming*, far from being a case of first impression, merely restated what had been existing Commission policy with respect to dismissal of the latter-filed inconsistent application. As we observed in 1953, Section 73.3518 is designed to "prevent the abuse of our

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[10] The Commission has always considered both the signal overlap and numerical limitation provisions under the general rubric of "multiple ownership rules." *See, e.g., WPOW, Inc.*, FCC 86-275, Mimeo No. 36723 (released June 4, 1986); *see also* the *First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd at 1723.

[11] By June 1, 1991, the staff had processed approximately 7150 FM construction permit applications under the "hard look" processing system. Recently, in a Notice of Proposed Rule Making in MM Docket No. 91-347, we proposed to modify or eliminate the FM "hard look" processing rules, but stated that any such change would only apply to applications filed after the effective date of the rule changes. *Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications*, 6 FCC Rcd 7265 (1991).

[12] Similarly, the Commission's prior policy of maximizing the pool of applicants from which to select a broadcast licensee by permitting late-filed curative amendments and procedural tardiness (*see Azalea Corp.*, 31 FCC 2d 561 (1971)) was abandoned in favor of placing "greater emphasis on providing service to the public in the most efficient, expeditious manner possible. Temporizing with flawed proposals has in the past disserved the public interest by inordinately delaying the initiation of new service. *Chudy Broadcasting Corporation*, 58 RR 2d 133, 134 n. 7 (1985)." *Star Signal Corporation*, 1 FCC Rcd at 451.

[13] In several pre-"hard look" cases, inconsistent applications were not dismissed when, at the time of filing of the latter-filed application, the applicant made the unequivocal statement that its earlier-filed application had been or would be shortly dismissed. *See, e.g., Harold J. Haley d/b/a Madison County Broadcasting*, reference 8910-PJR (Chief, Audio Services Division, February 3, 1984), *aff'd sub nom. Madisonville Media Company*, FCC 84-630, Mimeo No. 35404 (released December 18, 1984) (reinstatement of later-filed application); 2 FCC Rcd 40, *aff'd*, 836 F.2d 653 (D.C. Cir. 1988) (grant of later-filed application); *cf. Big Wyoming*, 2 FCC Rcd at 3494, paragraph 9. In this case, there was no statement whatsoever in the latter-filed application concerning the applicant's intention with respect to the earlier-filed application.

processes by the *filing* of two or more applications which are inconsistent with each other either on their face or in the context of any of our rules." *WSTV, Inc.*, 17 FCC 530, 531 (1953) (emphasis added). We also held in 1965 that when a violation of the inconsistent application rule occurs, the appropriate action is the dismissal of the latest filed application. *D. H. Overmyer Communications Co. (Agnes J. Reeves Greer)*, 45 FCC 2d 2272 (1965). Both of these cases were cited in *Big Wyoming*. Here, applications which had impermissible duopoly overlap were filed by South Coast and Premier, which are the same applicant under our attribution rules and "hard look" criteria. Thus, the filing of the Montecito application clearly violated Section 73.3518, which forbids the filing of subsequent inconsistent applications "by or on behalf of the same applicant, successor or assignee," and the dismissal of that latter-filed application was therefore consistent with Commission precedent.

14. Accordingly, for the reasons set forth above, IT IS ORDERED that the petition for reconsideration filed by Premier on October 16, 1987 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE
NETWORK, INC. File No. I-T-C-91-147

Application for authority to operate
as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 16, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by American Telephone Network, Inc. (ATN).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-91-147 IS GRANTED, and ATN is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in that tariff.

3. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of its execution.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB AERO-NAUTICAL COMMUNICATIONS, INC. File No. I-T-C-91-157

Application for authority to resell the services of other common carriers for the provision of international switched voice, data and telex services between the U.S. and various international points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 16, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. The above-captioned application, filed by IDB Aero-Nautical Communications, Inc. (IDB Aero), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the services of other common carriers for the provision of international switched voice, data and telex services between the U.S. and various international points. The application was placed on public notice on July 3, 1991. No comments were received.

2. IDB Aero is a common carrier authorized to provide maritime mobile satellite service and aeronautical mobile satellite service via the INMARSAT system. It now seeks authority to provide international switched voice, data and telex services by the resale of the services of other common carriers and in competition with such carriers. IDB Aero is a foreign-owned carrier under the Commission's decision in *International Competitive Carrier* policies, 102 F.C.C. 2d 812, 842 (1985), *recon. denied*, 60 Rad. Reg. 2d (P&F) 1435 (1986), and is dominant in its provision of international common carrier services between U.S. and international points.

3. As a dominant carrier in its provision of international common carrier services, IDB-Aero remains subject to traditional entry and rate regulation. Our Section 214 authorizations issued to dominant carriers specify the facilities they may acquire or lease to provide a particular service to the authorized international points. In the case of resale carriers, these orders authorize carriers to provide an identified resale service, such as international switched voice, by reselling the services set forth in a particular underlying carrier's tariff to specified international points. Dominant carriers seeking to supplement or modify their existing authorization must do so by formal application. Such applications are required where the dominant carrier seeks authority to provide a new service, resell an additional offering not specified in its existing Section 214 authorizations, or, serve additional points set forth in the underlying carriers' tariffs but not specified in the reseller's existing Section 214 authorizations.

4. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future convenience and necessity require the provision of resale of international switched voice, data and telex services by IDB-Aero between the United States and the points listed in Appendix A.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-91-157 IS GRANTED, and IDB-Aero is authorized to provide international switched voice, data and telex services by the resale of the international common carrier services set forth in AT&T's Tariff F.C.C. No. 1, CCI's Tariffs F.C.C. Nos. 3 and 5, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs FCC Nos. 1 and 2 between the U.S. and the points listed in the Appendix A.

6. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide services and shall file them with the Commission within 30 days of their execution.

7. IT IS FURTHER ORDERED that the applicant shall file quarterly reports of revenue, number of messages, and number of minutes of both originating and terminating traffic for all international services between the U.S. and all countries it is authorized to serve within 90 days from the end of each calendar quarter.

8. IT IS FURTHER ORDERED that the applicant shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61.

10. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX A

COUNTRIES TO BE SERVED

Argentina
Australia
Austria
Bahamas
Bahrain
Barbados
Belgium
Bermuda
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Costa Rica
Cote D'Ivoire
Cyprus
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Egypt
Finland
France
Germany
Greece
Guatemala
Guyana
Hong Kong
Honduras
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea
Kuwait
Lebanon
Liberia
Malaysia
Mexico
Morocco
Netherlands
New Zealand
Nigeria
Norway
Pakistan
Panama
Peru
Philippines
Poland
Portugal
Romania
Saudi Arabia
Singapore
South Africa
Spain
Sweden
Switzerland
Taipei
Thailand
Trinidad
Turkey
United Kingdom
U.S.S.R.
Venezuela
Yugoslavia

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IT&E OVERSEAS, INC. File No. I-T-C-91-214

Application for authority to provide telephone service between Guam and Micronesia and the Marshall Islands, and to resell the services of the Hawaiian Telephone Co.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 16, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the public convenience and necessity require a grant thereof.

2. Accordingly, IT IS HEREBY ORDERED that application File No. I-T-C-91-214 IS GRANTED, and IT&E Overseas, Inc. (IT&E) is authorized to:

a. provide international switched voice service by the resale of the international switched voice service set forth in HTC's Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariff;

b. lease from Comsat and operate five voice-grade satellites circuits between an appropriate earth station on Guam and an appropriate satellite over the Pacific Ocean;

c. lease and operate five voice-grade circuits in the appropriate Guam earth station; and

d. use the facilities in b and c above to provide IT&E's regularly authorized services between Guam and the Marshall Islands (three circuits) and the Federated States of Micronesia (two circuits) and beyond.

3. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of its execution.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CHARGE-A-CALL, INC. File No. I-T-C-91-226

Application for authority to operate
as an international resale carrier.

PAY PHONE, INC. File No. I-T-C-91-227

Application for authority to operate
as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 16, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by Charge-A-Call, Inc. and Pay Phone, Inc.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-91-226 and I-T-C-91-227 ARE GRANTED; and Charge-A-Call, Inc. and Pay Phone, Inc. are authorized to provide international switched voice service by the resale of the international switched voice service set forth in Intellicall Operator Services, Inc.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariff; and

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AFFORD-A-CALL, CORP. File No. I-T-C-92-011

Application for authority to operate
as an international resale carrier.

MUTUAL TELCOM, INC. File No.I-T-C-92-013

Application for authority to operate
as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by Afford-A-Call, Inc. and Mutual Telcom, Inc.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-011 and I-T-C-92-013 ARE GRANTED; and

a. Afford-A-Call is authorized to provide international switched voice service by the resale of the international switched voice service set forth in Litel Telecommunications Corp.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariff; and

b. Mutual Telcom is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IOWA NETWORK SERVICES, INC. File No. I-T-C-92-014

Application for authority to operate as an international resale carrier.

NORTHERN FLORIDA TELEPHONE CORP. File No. I-T-C-92-016

Application for authority to operate as an international resale carrier.

WORLD COMMUNICATIONS, INC. d/b/a W.C.I., Inc. File No. I-T-C-92-017

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by Iowa Network Services, Inc. (INS), Northern Florida Telephone Corp. (NFTC) and W.C.I., Inc.[1]

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-014, I-T-C-92-016 and I-T-C-92-017 ARE GRANTED; and

a. INS is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1, 2, and 4, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, Allnet's Tariff F.C.C. No. 5, Hawaiian Telephone Co.'s Tariff F.C.C. No. 1, St. Thomas and San Juan Telephone Co.'s Tariff F.C.C. No. 1 and Teleconnect Long Distance Services & Systems Co.'s Tariff F.C.C. No. 3 between the U.S. and the international points listed in those tariffs; and

b. NFTC and W.C.I. are authorized to provide international switched voice service by the resale of the international switched voice service set forth in Intellicall Operator Services, Inc.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] World Communications, Inc. is the name of another international carrier, so the "d/b/a W.C.I." is being used to avoid confusion.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PACIFIC GATEWAY EXCHANGE, INC. File No. I-T-C-92-020

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by Pacific Gateway Exchange, Inc. (Pacific Gateway).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-92-020 IS GRANTED, and Pacific Gateway is authorized to provide international switched voice service by the resale of the international switched voice service set forth in MCI's Tariff F.C.C. No. 1, AT&T's Tariffs F.C.C. Nos. 1 and 2, Hawaiian Telephone Co.'s Tariff F.C.C. No. 1, TRT/FTC's Tariff F.C.C. No. 12, Worldcom's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of its execution.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

RGT UTILITIES, INC. File No. I-T-C-92-022

Application for authority to operate as an international resale carrier.

COMMUNIQUE TELECOMMUNICATIONS, INC. File No. I-T-C-92-023

Application for authority to operate as an international resale carrier.

FLORIDA PUBLIC TELEPHONE, INC. File No. I-T-C-92-024

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by RGT Utilities, Inc. (RGT), Communique Telecommunications, Inc. (CTI) and Florida Public Telephone, Inc. (FPTI).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-022, I-T-C-92-023 and I-T-C-92-024 ARE GRANTED; and

a. RGT is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs.

b. CTI is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs; and

c. FPTI is authorized to provide international switched voice service by the resale of the international switched voice service set forth in Intellicall Operator Services, Inc.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariff.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IN-FLIGHT PHONE CORP. File No. I-T-C-92-032

Application for authority to operate as an international resale carrier.

CENTRAL TELECOM File No. I-T-C-92-033

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1992; Released: January 29, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by In-Flight Phone Corp. (In-Flight) and Central Telecom.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-032 and I-T-C-92-033 ARE GRANTED; and

a. In-Flight is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1, and US Sprint's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs; and

b. Central Telecom is authorized to provide international switched voice service by the resale of the international switched voice service set forth in Intellicall Operator Services Inc.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS,
Complainant,

v. File No. E-90-03

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.,
AND THE MAJOR
PARTICIPANTS IN ITS
1988 CARRIER
COMMON LINE POOL
Defendants.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: January 23, 1992; Released: January 29, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On October 3, 1989, AT&T Communications (AT&T) filed the above-captioned complaint against the National Exchange Carrier Association, Inc. ("NECA"), alleging that the NECA carrier common line rate for 1988 was unjust and unreasonable in violation of 47 U.S.C. § 201(b). This action was filed by AT&T as a companion proceeding to a complaint against Southwestern Bell Telephone Company, a local exchange carrier ("LEC") that participated in NECA's Carrier Common Line pool.

2. On January 6, 1992, AT&T filed a motion to dismiss this complaint with prejudice. AT&T states that as a result of discussions between the parties, the companion complaint was dismissed by the Commission.[1] Therefore, AT&T concludes that no purpose would be served by the continued pendency of this proceeding against NECA.

3. We are satisfied that dismissal of this complaint will serve the public interest by eliminating the expenditure of further time and resources of the parties and of this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaint IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

[1] AT&T Communications v. Illinois Bell Tel. Co., *et al.*, 7 FCC Rcd 38 (Enf. Div. Com. Car. Bur. 1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ARCH CAPITOL DISTRICT, INC.

For facilities in the Public
Land Mobile Service for
station KPD955 at:

Olean, New York	File No. 28160-CD-P/ML-01-90
Ripley, New York	File No. 27175-CD-P/ML-01-90
Little Valley, New York	File No. 27522-CD-P/ML-01-90
Arkwright, New York	File No. 27521-CD-P/ML-01-90
Erie, Pennsylvania	File No. 27510-CD-P/ML-01-90

ORDER ON RECONSIDERATION

Adopted: January 23, 1992; Released: January 29, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The Mobile Services Division (MSD) granted the five captioned applications of Arch Capitol District, Inc. (Arch) for additional facilities in the Public Land Mobile Service (PLMS). *See* Public Notice Report No. PMS-91-30A (released April 24, 1991); Public Notice Report No. PMS-91-33A (released May 15, 1991). Professional Communications, Inc. (Professional) has filed a petition for reconsideration of that grant, arguing that two of the granted Arch facilities will cause electrical interference to a station proposed by Professional. Professional further argues that all of the captioned applications should be included in a lottery. For the reasons stated below, Professional's petition is dismissed.

II. BACKGROUND

2. On July 9, 1990, Professional filed an application for authority to change its operating frequency for Station KNKD991 at Warren, Pennsylvania from 152.09 MHz to 454.450 MHz. On July 30, 1990, Arch filed a mutually exclusive application for authority to construct a new PLMS facility to operate on 454.450 MHz at Jamestown, New York. *See* Public Notice Report No. PMS-91-34 (released May 22, 1991). These applications are mutually exclusive and will be scheduled for lottery pursuant to Section 22.33(a) of the Commission's rules.

3. Arch subsequently filed the five captioned applications for additional 454.450 MHz facilities at Little Valley, Olean, Ripley and Arkwright, New York, and Erie, Pennsylvania.[1] All of these applications purported to show non-interference with respect to Professional's Warren proposal. No petitions to deny were filed against the captioned applications.

4. By letter dated March 4, 1991, the MSD asked Arch to submit further engineering studies demonstrating non-interference with respect to Professional's Warren proposal. On April 2, 1991, Arch filed minor amendments to the five captioned applications. These amendments reduced the power of the proposed facilities and included further interference studies indicating that the proposed facilities would protect the Warren proposal from interference. The MSD granted the applications, as amended.

III. DISCUSSION

5. Professional in its petition objects to the engineering methodology used by Arch in its April 2, 1991 amendments demonstrating interference free operation and argues that the Little Valley and Olean facilities will cause electrical interference to Professional's Warren proposal. Professional also argues that the five captioned applications are in the same general geographic area as the Jamestown proposal, that some have overlapping service contours with the Jamestown proposal and that the captioned applications are unnecessary applications filed merely to "circumvent" the lottery process. Professional contends that, pursuant to the consolidation policy stated in *T-Comm, Inc.*, Mimeo No. 2727 (released February 22, 1985), the captioned applications should be consolidated with the Jamestown application and included in the lottery. Professional further argues that it could not submit its arguments earlier because it was unaware of the MSD's March 4, 1991 letter requesting additional information and of the minor amendments filed by Arch.

6. Section 1.106(b) of the rules provides that a petition for reconsideration filed by a non-party must show good reason why it was not possible to participate earlier. We find Professional's argument that it could not submit its arguments earlier unpersuasive. Professional had an obligation to examine the captioned applications during the thirty day period provided by Section 22.30 of the rules, and to raise any interference or other arguments that could be raised in a timely filed petition to deny. It did not do so. Although Professional's petition questions the interference potential of the proposed facilities as amended on April 2, 1991, we note that the Arch amendments reduced power for the proposed facilities, and thus did not create any new interference problems with respect to the original applications. We conclude that Professional could have raised its interference and consolidation arguments in a petition to deny filed in response to the originally filed applications and has failed to show good cause why it did not do so. Its petition is therefore procedurally defective.

7. Even if Professional's petition was not procedurally defective, its substantive arguments are without merit. First, Arch has responded to the interference arguments raised by Professional. On October 1, 1991, Arch filed two FCC Forms 489 further reducing power for the Little Valley and Olean facilities. Arch also submitted additional interference studies which take into account the engineering objections raised by Professional in its petition and which show that the Little Valley and Olean facilities, as modified, will not cause electrical interference to Professional's Warren station. Professional was served with Arch's October 1, 1991 filings and has raised no objection. Accordingly, we find that the public interest does

not require further consideration of the interference arguments raised in Professional's post-grant petition. *See* Section 1.106(c)(2) of the rules.

8. Second, in the *T-Comm* decision, we stated our policy of consolidating mutually exclusive locations for purposes of a lottery to prevent applicants from applying for additional locations solely to increase their chances of winning. In *T-Comm*, each of the consolidated locations was mutually exclusive with the single location requested by another carrier, and thus would be included in the lottery. The question in the case was whether T-Comm would be allowed to enter the locations in the lottery separately, and thus receive multiple chances as against the opposing carrier's single application, or whether the locations should be included in the lottery in a consolidated posture. However, the captioned Arch applications are not mutually exclusive with the Warren application and therefore *T-Comm* does not apply, and the applications do not need to be included in the lottery.[2] Professional's argument is therefore without merit.

IV. CONCLUSION

9. Professional's petition is procedurally defective because it fails to meet the requirements of Section 1.106(b) of the rules. Additionally, Professional's substantive arguments are without merit. Accordingly, its petition for reconsideration is, therefore, dismissed.

V. ORDERING PARAGRAPHS

10. For the foregoing reasons, IT IS ORDERED that the petition for reconsideration filed by Professional Communications, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] These applications were filed within sixty days of the date of the public notice listing the Warren application as accepted for filing. *See* Section 22.31(b) of the rules.

[2] Professional also argues that the captioned applications should be consolidated with the Jamestown application for purposes of the lottery, because they are unnecessary encircling applications filed merely to "circumvent" the lottery process. However, Arch responds that it filed the captioned applications because it seeks to meet a *bona fide* need of subscribers in these areas, regardless of whether or not the Jamestown authorization is granted, and Professional has provided no evidence to the contrary. Accordingly, Professional's argument is rejected.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-11

In the Matter of

Amendment of Section 73.202(b), RM-7881
Table of Allotments,
FM Broadcast Stations.
(Inglis, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 21, 1992; Released: January 29, 1992

Comment Date: March 23, 1992
Reply Comment Date: April 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lucille Ann Lacy ("petitioner"), seeking the allotment of Channel 282A to Inglis, Florida, as that community's first local FM service. Petitioner states her intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 282A to Inglis, Florida, since it could provide that community with its first local FM channel. Channel 282A can be llotted to Inglis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) northwest,[1] in order to avoid a short-spacing to Station WZTU(FM), Channel 281C, Cocoa Beach, Florida.

3. In view of the fact that Inglis, Florida, could receive its first local FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Inglis, Florida	--	282A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 23, 1992,** and reply comments on or before **April 7, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lucille Ann Lacy
3507-A Van Tassel
Amarillo, Texas 79121
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates are for Channel 282A are North Latitude 29-02-45 and West Longitude 82-40-53.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-12

In the Matter of

Amendment of Section 73.202(b), RM-7883
Table of Allotments,
FM Broadcast Stations.
(Belle Fourche, South Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 22, 1992; Released: January 29, 1992

Comment Date: March 23, 1992
Reply Comment Date: April 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lovcom, Inc. ("petitioner"), requesting the substitution of Channel 240C1 for Channel 240A at Belle Fourche, South Dakota, and the modification of Station KBFS-FM's license to specify operation on the higher class channel. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 240C1 for Channel 240A at Belle Fourche since it could provide the community with a wide coverage FM service and enable Station KBFS-FM to expand its service area. Channel 240C1 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.4 kilometers (23.8 miles) south to accommodate petitioner's desired transmitter site.[1] As requested, we also propose to modify petitioner's license for Station KBFS-FM to specify operation on Channel 240C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Belle Fourche or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Belle Fourche, South Dakota	240A	240C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 23, 1992,** and reply comments on or before **April 7, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

W. K. Love
Station KBFS
P.O. Box 787
Belle Fourche, South Dakota 57717
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Coordinates for Channel 240C1 at Belle Fourche are North Latitude 44-19-35 and West Longitude 103-50-15.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-243

In the Matter of

Amendment of Section 73.202(b), RM-7766
Table of Allotments,
FM Broadcast Stations.
(Rusk, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 22, 1992; Released: January 29, 1992

By the Assistant Chief, Allocations Branch:

1. At the request of E. H. Whitehead ("petitioner"), licensee of Station KWRW(FM), Channel 249A, Rusk, Texas, the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 5008 (1991), proposing the substitution of Channel 249C3 for Channel 249A at Rusk, Texas, and modification of Station KWRW(FM)'s license to specify operation on the higher powered channel. Petitioner filed comments stating his intention to apply for channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 249C3 for Channel 249A at Rusk, since it would provide the community with a wide coverage area FM service. Channel 249C3 can be allotted to Rusk in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to accommodate petitioner's desired site.[1] As proposed, we will also modify petitioner's license for Station KWRW(FM) to specify operation on Channel 249C3 in accordance with the provisions of Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 16, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Rusk, Texas	249C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of E. H. Whitehead for Station KWRW-(FM), Rusk, Texas, IS MODIFIED to specify operation on Channel 249C3, in lieu of Channel 249A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, E. H. Whitehead, licensee of Station KWRW(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As stated in the *Notice*, petitioner's proposal would be contingent upon Station KALK(FM) at Winfield, Texas, receiving a license to operate on Channel 249C2 in accordance with its outstanding construction permit. However, on December 19, 1991, the Commission granted Station KALK(FM)'s construction permit (BMPH-910719IG) to operate on Channel 249C3, thereby eliminating any conflict with this proceeding. The coordinates for Channel 249C3 at Rusk are North Latitude 31-44-57 and West Longitude 95-09-26.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-94

In re Applications of

BIBLE BROADCASTING NETWORK, INC. File No. BPED-880301ML

WEISS BROADCASTING OF NOBLESVILLE, INC. File No. BPH-880301MQ

BROADCAST COMMUNICATIONS, INC. File No. BPH-880301MZ

BEN L. UMBERGER File No. BPH-880301PD

For Construction Permit For New
FM Station on Channel 230A,
Noblesville, Indiana

ORDER

Adopted: January 22, 1992; Released: January 30, 1992

By the Review Board: MARINO (Chairman), BLUMENTHAL, and GREENE.

1. On December 20, 1991, the Review Board adopted a *Decision*, FCC 91R-121, in this case. Prior to its release, Broadcast Communications, Inc. (BCI) filed on January 3, 1992, a petition for leave to amend, pursuant to 47 CFR § 1.65. The amendment reports that the proposed sale of Radio Station WYIC has been cancelled and that BCI has permanently discontinued operation of WYIC. No comments have been received concerning the petition; its acceptance involves no determination as to the effect to be given the amendment; and good cause has been shown.

2. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend filed January 3, 1992 by Broadcast Communications, Inc. IS GRANTED, and the amendment IS ACCEPTED for reporting purposes only.

FEDERAL COMMUNICATIONS COMMISISON

Marjorie Reed Greene
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-168

In re Applications of

LT/COLONEL CYRUS V. EDWARDS — File No. BPH-851024MB

BOTT COMMUNICATIONS, INC. — File No. BPH-851028MG

For Construction Permit for
New FM Station, Channel 236C,
Shawnee, Oklahoma

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 1992; Released: January 30, 1992

By the Review Board: MARINO (Chairman), BLUMENTHAL, and GREENE.

1. Before the Review Board is a "Petition For Court Review and Reversal Of Ruling" ("exceptions") filed by Lt/Colonel Cyrus V. Edwards (Edwards) on January 8, 1992 to the *Initial Decision*, FCC 91D-64, released December 18, 1991.

2. Edward's exceptions are 44 pages in length, not counting the substantial exhibits attached thereto. Thus, the exceptions substantially exceed the 25-page limitation specified in Section 1.277(c) of the Commission's Rules, 47 CFR § 1.277(c) (revised) (the table of contents and table of citations are not counted in the 25-page limit). *See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 6 FCC Rcd 157, 163 (1990), *modified*, 6 FCC Rcd 3403, 3404 (1991). Additionally, the exceptions violate Section 1.276(a)(2) of the Commission's Rules, 47 CFR 1.276(a)(2), in that they fail to contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on. Finally, the exceptions are also deficient with respect to Section 1.277(a) of the Rules, 47 CFR § 1.277(a). That section requires that exceptions, including rulings upon motions or objections, shall point out with particularly alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived.

3. ACCORDINGLY, IT IS ORDERED, That the "Petition For Court Review And Reversal Of Ruling," filed January 8, 1992 by Lt/Colonel Cyrus V. Edwards IS DISMISSED, subject to being refiled in the proper form within ten (10) days of the release date of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BELL COMMUNICATIONS RESEARCH, INC. AAD 91-78

Public Release
of Information
Obtained during
Joint Audit

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 1992; Released: January 24, 1992

By the Commission:

I. INTRODUCTION

1. This Memorandum Opinion and Order authorizes the Common Carrier Bureau (Bureau) to disclose to state regulators certain financial information obtained by Commission auditors during the course of a joint federal/state audit of Bell Communication Research, Inc. (Bellcore). The Bureau is hereby authorized to share this information with state regulators with the understanding that the information is to be included in a staff report prepared by the federal/state audit team that may be made available to state public utility commissions and the general public. Although we thus authorize the potential public disclosure of this information pursuant to Section 220(f) of the Communications Act, as amended (Act),[1] we emphasize that we are not adopting the federal/state staff report or endorsing any of the analysis, conclusion and recommendations in it.

II. BACKGROUND

2. Bellcore is a corporation created at divestiture to provide research, engineering, and technical support services to its owners, the Regional Bell Holding Companies (RHCs), and their affiliates, the Bell Operating Companies (BOCs). In 1991, Commission staff joined with state regulators in auditing Bellcore. During the audit, the joint federal/state audit team examined the budgeting, cost accounting, and billing procedures for Bellcore's transactions with the RHCs and their telephone operating company affiliates, for the period 1984 through 1990. At the conclusion of the audit, the audit team prepared a report evaluating whether Bellcore's procedures are consistent with this Commission's and state commissions' rules and policies regarding affiliate transactions.[2]

3. The staff's audit report summarizes and analyzes information, including financial data, that Bellcore provided to the Commission and state personnel during the course of the audit. Bellcore furnished information and documents to Commission auditors subject to a general request for confidential treatment under 47 C.F.R. Section 0.459.[3] In addition, Bellcore entered into a protective agreement with the state members of the audit team. The agreement provided that "[t]he Audit Team's report, minus any Proprietary Information or documents, [would] be made available through NARUC to the general public... and to regulatory commissions in those jurisdictions which do not afford protection to Proprietary Information," and that members of the audit team and Bellcore would "work together to permit such publication... without compromising" any information Bellcore considered proprietary.[4] In accordance with this agreement, the audit team provided Bellcore with a draft of the audit report and gave Bellcore an opportunity to identify any information in the draft that Bellcore believed entitled to protection from public disclosure. Bellcore identified several such items, and the audit team deleted each identified item from the final report. Thereafter, Bellcore prepared comments to the staff's audit report, and the audit team replied to Bellcore's comments.[5]

4. On November 13, 1991, NARUC, through its Executive Committee, received the audit team's final report on the financial activities of Bellcore.[6] In voting to receive the report, the NARUC Executive Committee also voted to direct publication and distribution of the report, but to withhold release pending our authorization of the disclosure of facts and information learned by our employees during the course of the audit.[7] The report that NARUC received consists of the audit team's final report; Bellcore's comments, which Bellcore asked to have appended to the report prior to its release; and the audit team's reply to Bellcore's comments.

III. DISCUSSION

5. This Commission has a longstanding policy of respecting the confidentiality of information and documents obtained from common carriers during audits performed by Commission personnel. This policy recognizes that carriers have a legitimate interest in protecting confidential commercial or financial information and that public disclosure could result in competitive injury to carriers who provide such confidential information to the Com-

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[1] 47 U.S.C. § 220(f).

[2] *E.g.*, 47 C.F.R. §32.27 (federal affiliate transaction rules). Bellcore is an affiliate of each of the BOCs for purposes of our affiliate transaction rules. *See, e.g.*, Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 433, 435, paras. 13-14 (Com.Car.Bur. 1988).

[3] Bellcore also requested confidential treatment on the RHCs' behalf.

[4] Protective Agreement between Bellcore and Individual State Public Utility Commission Staff Members, 3 (May 7, 1990). "NARUC" is an acronym for the National Association of Regulatory Utility Commissioners.

[5] The reply addresses Bellcore's comments and contains no information over which Bellcore asserts a claim of confidentiality.

[6] NARUC-FCC Accounting Task Force Audit Team, Report on the Review of Bellcore Financial Activities (Oct. 30, 1991).

[7] NARUC Executive Committee, Resolution Regarding Publication of the Audit Report on the Bell Communications Research, Inc. (Nov. 13, 1991) (*NARUC Resolution*).

mission. Moreover, this policy is designed to enhance the efficiency and integrity of our audit processes by encouraging carriers to comply in good faith with staff requests for information and documents. Although the Commission has a statutory right of access to documents and records of common carriers, we have recognized that carriers are more likely voluntarily to cooperate with Commission auditors in providing necessary information and documents when the Commission respects legitimate requests for confidential treatment.[8]

6. The Commission's policy concerning the confidentiality of information obtained during audits emanates from Section 220(f) of the Act and Exemption 4 of the Freedom of Information Act ("FOIA").[9] Section 220(f) prohibits the public disclosure by Commission personnel of facts and information obtained during an audit absent a Commission or court order. Exemption 4 of the FOIA permits the Commission to withhold from public inspection confidential commercial or financial information when disclosure would be likely to cause the party submitting those materials substantial competitive harm, or to impair the government's ability to obtain necessary information in the future.[10] These statutory provisions reflect a congressional recognition that businesses that provide sensitive commercial and financial information to government agencies retain a legitimate interest in preserving the confidentiality of that information.

7. Accordingly, the Commission withholds from public disclosure raw financial data obtained from carriers during audits as well as audit workpapers compiled by Commission staff.[11] Likewise, our general policy is to withhold from public disclosure audit reports prepared by Commission staff.[12] In the vast majority of instances, such reports are based on information provided by carriers subject to claims of confidentiality. Moreover, the Commission considers such audit reports to be internal agency documents that generally should not be disclosed because they present staff findings and recommendations to assist the Commission in pre-decisional deliberations. We have departed from this general policy and released audit reports prepared by Commission staff only in exceptional cases when we have determined: (1) that the summary nature of the data and information contained in a particular report is not likely to cause the providing carrier substantial competitive injury; (2) that release of summary data and information is not likely to impair our ability to obtain such information in future audits; and (3) overriding public interest concerns favor release of the report.[13]

8. None of the underlying concerns that normally lead us to withhold audit information from public disclosure are present in this case. Disclosure of the information in question in these circumstances is not likely to cause Bellcore or its affiliates competitive harm, substantial or otherwise. Pursuant to the protective agreement between Bellcore and the state members of the audit team, Bellcore was afforded a full opportunity to assert claims of confidentiality over specific financial information presented in the audit team's draft report. Bellcore in fact exercised its rights under the agreement and requested that certain information which it deemed proprietary be deleted before public release of the report. The audit team honored these claims and removed the material identified as proprietary by Bellcore. With respect to the balance of the financial information contained in the report, however, Bellcore asserted no claim of confidentiality. Bellcore's decision not to claim confidential treatment of the remaining information in the staff report leads us to conclude that disclosure of this material will not cause Bellcore or its affiliates competitive injury.

9. Moreover, because of the nature of the information in question, we conclude that authorizing disclosure of this information for inclusion in the audit report is unlikely to impair our ability to obtain necessary information in the future. Since Bellcore asserts no claim of confidentiality concerning this information, it is unlikely that disclosure would reduce cooperation with this Commission in future audits. In addition, the audit team's portions of the report are restricted to narrative regarding Bellcore's overall processes and financial results, aggregate data regarding those matters, and analysis, conclusions, and recommendations in regard to the data. The summary nature of this information significantly diminishes the possibility that its disclosure would impair our ability to obtain necessary information in the future.[14]

10. In any event, given the unlikelihood of substantial competitive harm or impairment of our ability to obtain necessary information, we believe there is a significant public interest in authorizing disclosure of this information for inclusion in the federal/state staff audit report. The report reflects a joint federal-state effort to examine matters of mutual concern that could become the subject of further investigations or other actions by this Commission and its state counterparts. Prior to the audit, Bellcore recognized that not all states afford protection to proprietary information, and that the audit report would be released to all states and to the public after the deletion of any information that Bellcore considered proprietary.[15] We agree with NARUC that the report contains information important to effective regulation of the telecommunication industry.[16] In the report, the audit team concludes that Bellcore charged excessive prices on its transactions with the BOCs, and that the BOCs may have overcharged ratepayers. If correct, these are serious matters. We believe that public disclosure of the information contained in the report is necessary to inform state regulators and consumers concerning the alleged circumstances surrounding Bellcore's transactions with its affiliates and the potential implications those transactions present for regulators and

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[8] *See* National Exchange Carrier Ass'n, 5 FCC Rcd 7184, para. 5 (1990); J. David Stoner, 5 FCC Rcd 6458, 6459, para. 12 (1990); Martha H. Platt, 5 FCC Rcd 5742, para. 6 (1990); Scott J. Rafferty, 5 FCC Rcd 4138, para. 5 (1990); Western Union Telegraph Co., 2 FCC Rcd 4485, 4486, para. 11 (1987).

[9] 5 U.S.C. § 552 (b)(4).

[10] National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks I*).

[11] *See, e.g.*, Scott J. Rafferty, 5 FCC Rcd 4138 (1990); J. David Stoner, 5 FCC Rcd 6458 (1990); Martha H. Platt, 5 FCC Rcd 5742 (1990).

[12] *See* National Exchange Carrier Ass'n, 5 Fcc Rcd at 7185, n.15 (Commission's general policy is to preserve confidential status of audit reports); Martha H. Platt, 5 FCC Rcd at 5743, n.8 (same).

[13] *See* New York Telephone Co., 5 FCC Rcd 876 (1990); National Exchange Carrier Ass'n Inc., 5 FCC Rcd 7184 (1990).

[14] *See* National Exchange Carrier Ass'n, Inc., 5 FCC Rcd 7184 (1990); New York Telephone Co., 5 FCC Rcd 876 (1990).

[15] *See* text accompanying note 4, *supra*.

[16] *NARUC Resolution*, *supra*.

ratepayers. Accordingly, we authorize the Bureau to disclose to state regulators certain facts and information that this Commission's employees obtained during the course of the audit, with the understanding that this information is included in the audit report prepared by the federal/state audit team and is intended for public release by NARUC.[17]

11. We emphasize that in authorizing disclosure of this information, we are not adopting the report or endorsing any of the analysis, conclusions, and recommendations in it. We also emphasize that this *Order* does not evaluate the sufficiency of Bellcore's request for confidentiality with regard to any data or other information this Commission's employees have obtained or may obtain during the course of the audit, other than that which is contained in the audit report, because those issues have not been presented.

12. Pursuant to Section 0.459(g) of this Commission's Rules,[18] Bellcore will be afforded five working days in which to seek a judicial stay of this Commission ruling. We direct the Chief, Common Carrier Bureau, immediately upon Commission release of this Order, to furnish by telephone to NARUC and Bellcore notice of our determination and of the time for seeking judicial stay, as well as a follow up notice in writing to Bellcore that includes a copy of this *Order* and the audit report, as set forth below.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 220(f) of the Communications Act of 1934, as amended, 47 U.S.C. §220(f), and Section 0.459(g) of this Commission's Rules, 47 C.F.R. §0.459(g), that the Common Carrier Bureau IS AUTHORIZED to disclose to state regulators certain financial information, obtained during the joint audit of Bellcore, with the understanding that such information is to be included in a federal/state staff audit report that may be released to state public utility commissions and the public. This authorization shall be effective on the sixth working day following service of this *Order* upon Bellcore, absent issuance of a judicial stay.

14. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and Section 0.459 of this Commission's Rules, 47 C.F.R. §0.459, that the request of Bell Communications Research, Inc., for confidential treatment of certain financial information submitted in connection with the joint audit IS DENIED to the extent necessary to release the data and other information contained in the October 30, 1991 report entitled, "Report on the Review of Bellcore Financial Activities."

15. IT IS FURTHER ORDERED, pursuant to Section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §154(j), that copies of this *Order* and the audit report shall be served upon Bell Communications Research, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[17] The Bureau has delegated authority to disclose to state regulators audit information which falls within the common jurisdiction of the Commission and the states, so long as state regulators are willing and able to treat commercial information according to our confidentiality rules and guidelines. *See* Amendment of Part 0 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, 57 RR 2d 1648, 1650, para. 10 (1985); Amendment of Parts 0, 1, and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, and Technical Corrections and Deletions, 5 FCC Rcd 4601, para. 7 & n. 4 (1990); 47 C.F.R. § 0.291(b) (delegated authority concerning Section 220 of the Act). Since this information is now to be included in a report which NARUC intends to release to the public, however, the Commission must now authorize disclosure pursuant to Section 220(f) of the Act.

[18] 47 C.F.R. §0.459(g).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 3769
Tariff F.C.C. No. 1

ORDER

Adopted: January 16, 1992; Released: January 16, 1992

By the Chief, Common Carrier Bureau:

1. On January 5, 1992, AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective January 17, 1992 on 14 days' notice. This filing introduces a promotion for AT&T Pro WATS service that would give discounts to existing Pro WATS customers who subscribe to the promotion between January 17, 1992 and April 3, 1992.

2. On January 10, 1992, MCI Telecommunications Corporation (MCI) filed a petition to reject, or, in the alternative, suspend and investigate Transmittal No. 3769.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal No. 3769 and MCI's petition. We conclude that no compelling argument has been presented that the tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject, or in the alternative, suspend and investigate AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 3769, filed by MCI Telecommunications Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re Request of

COMCAST CORPORATION File No. MSD-91-23

For Declaratory Ruling Concerning
Section 310(b)(4) of the
Communications Act of 1934, as
amended

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1992; Released: January 31, 1992

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. Comcast Cellular Communications, Inc. (CCI), requests a declaratory ruling that the appointment of John R. Alchin (Alchin), a Australian citizen to the corporate office of Senior Vice President and Treasurer of Comcast will not adversely affect the public interest.

II. DISCUSSION

2. Alchin will not exercise supervision or control over the operation of the licensed facilities of Amcell, its subsidiaries, partnerships controlled by its subsidiaries, or any other common carrier license controlled by Comcast and is supervised by the President of Comcast, the Chairman and Vice Chairman, all of whom are United States citizens.

3. Under Section 310(b)(4)[1] of the Act, a station license may not be held by:

> any corporation directly or indirectly controlled by any other corporation of which any officer . . . [is an] alien . . . if the Commission finds that the public interest will be served by the refusal or revocation of such license.

4. By its express language, the benchmarks established in Section 310(b)(4) apply to entities, such as Comcast which directly or indirectly control licensees. The restrictions in Section 310(b)(4) reflect national security concerns and are designed to guard against foreign influence by limiting aliens' participation in certain domestic radio activities. *See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310 (b) (3) and (4) of the Communications Act of 1934, as amended.* (Wilner & Scheiner), 103 F.C.C. 2d 511, 516-517 (1985), *recon.*, 1 FCC Rcd 12 (1986). Nevertheless, the statute permits licensing of a corporation controlled by another corporation which employs an alien officer where it is not contrary to the public interest. In previous cases, the Commission has found that the public interest would not be adversely served where the alien officers had no control or supervision of the licensee corporations. *Xerox Corporation,,* 74 F.C.C. 2d 471 (1979); *International Telephone and Telegraph Corp.*, 67 F.C.C. 2d 604 (1978).

5. In view of Comcast's representation that Alchin will have no control or management oversight of AWACS licensees or its subsidiaries, we cannot find that the alien participation in Comcast would be inconsistent with the Act or the public interest.

III. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that the request for declaratory ruling IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] The Bureau analyzed the alien participation in this case under Section 310(b)(4) of the Act because AWACS itself does not hold licenses, but controls Commisson licensees through its wholly-owned subsidiaries.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-426

In re Applications of

SHAWN PHALEN	File No. BPH-851231MO
ELLWOOD BEACH BROADCASTING, LTD.	File No. BPH-851231MS
SPIRIT BROADCASTING	File No. BPH-851231MZ
JAMES EVANS	File No. BPH-851231MR

For Construction Permit for
New FM Broadcast Station at
Montecito, California

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1992; Released: January 30, 1992

By the Review Board: MARINO (Chairman), and BLUMENTHAL.

1. In our *Memorandum Opinion and Order*, FCC 92R-1, released January 23, 1992, we indicated that the initial decision in *Salinas Broadcasting Limited Partnership*, 4 FCC Rcd 2762 (1989) had not been appealed. *See MO&O* at paras. 23-24 & n.28. This was incorrect, *see* 5 FCC Rcd 1613 (Rev. Bd. 1990)(remanding on site issue(s) against 5 applicants).

2. As the Commission has done, we will leave to the sound discretion of the ALJ the question of whether to examine Stanfield's conduct in the *Salinas* proceeding under Issue (1), even though *Salinas* remains subject to further review. *See Carmel Broadcasting Limited Partnership*, 6 FCC Rcd 3287 (1991)(Comm'n declines to delete issue based upon principal's conduct in another proceeding yet under administrative appeal).[1]

3. ACCORDINGLY, IT IS ORDERED, That the *Memorandum Opinion and Order*, FCC 92R-1, released January 23, 1992, IS MODIFIED as indicated above.[2]

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] As the Commission has explained:

> An initial decision is not a mere report to be arbitrarily disregarded. In the absence of review, the initial decision is the decision of the agency. Section 557(b) of the Administrative Procedure Act. Even when review is granted, the initial decision must be taken into account by the agency and when necessary by a reviewing court.

Stero Broadcasting, Inc., 74 FCC 2d 543, 546 (1979).

[2] In order to avoid delay, pre-publication copies of this order have been made available to the ALJ and the parties.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Warner Cable
Communications Inc.,
Complainant,

v. File No. PA 87-0009

Gulf Power Company,
Respondent.

ORDER

Adopted: January 22, 1992; Released: January 30, 1992

By the Chief, Accounting and Audits Division:

1. On July 10, 1987, Warner Cable Communications Inc., filed the above-captioned complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224, seeking a Commission determination that Gulf Power Company was charging pole attachment rates in excess of the maximum lawful rate.

2. On January 10, 1992, counsel for the complainant requested that its complaint be dismissed.

3. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the expenditure of further time and resources by the parties and this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154 (i), and authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§0.91, 0.291, that the complaint filed by Warner Cable Communications Inc., IS DISMISSED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 89-552

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Provide
for the Use of the 220-222 MHz
Band by the Private Land Mobile
Radio Services

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: January 21, 1992; Released: January 30, 1992

Comment Date: March 2, 1992
Reply Comment Date: March 23, 1992

By the Commission:

I. INTRODUCTION

1. We are issuing this *Further Notice of Proposed Rule Making* to solicit the public's views regarding the best available means for selecting licensees for the 220-222 MHz nationwide authorizations. Specifically, commenters are requested to address whether the use of comparative hearings is preferred to random selection as a mechanism for determining which nationwide applicants are best qualified to become licensees. Commenters are also asked to discuss whether the distinctions between the nationwide commercial and non-commercial set-asides[1] render any particular selection procedure preferable in either context. Finally, we are proposing certain general criteria to be used in the event that we choose to employ comparative selection procedures. Commenters are requested to discuss the utility of these criteria as well as to suggest additional criteria designed to identify the best qualified applicants.

II. BACKGROUND/DISCUSSION

2. In the *Notice of Proposed Rule Making* and *Report and Order* adopted in this proceeding, we concluded that the lottery process was the best available alternative for the selection of licensees.[2] In substantial part, this decision was premised upon our view that, because of the difficulty inherent in attempting to devise meaningful comparative criteria where private land mobile services are involved, the time and expense associated with comparative hearings would not likely produce a result more enlightened or more in the public interest than selection via lottery.[3] Because we recognized that an undesirable characteristic of lotteries is their appeal to speculators, we took several steps designed to minimize the number of speculative applications filed, and thus to restrict lottery entry to entities with legitimate communications plans.[4] Nevertheless, we received approximately 60,000 applications, the majority of which are for the local channels.[5] In our view, the considerable number of applications filed demonstrates that despite the adoption of measures specifically designed to prevent such a result, the 220-222 MHz lottery was perceived as a "treasure hunt" by a number of entities that have no apparent legitimate interest in developing and operating communications systems.[6]

3. In light of the above, we have been prompted to reexamine our decision and to consider whether the use of comparative hearings would be advantageous in guaranteeing that only the most qualified entities are selected for the nationwide 220-222 MHz authorizations. Although the number of local applications filed leads us to believe that the principal amount of speculation occurred at the local level, we remain convinced that the substantial similarities between the proposed systems of local applicants make it impracticable to attempt to compare their relative qualifications.[7] Moreover, in view of the volume of local applications filed and the small amount

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[1] Commercial nationwide licensees will be permitted to provide entrepreneurial communications service to any Part 90 eligible. Non-commercial licensees, in contrast, will be permitted to use the nationwide system only for their own internal communications purposes.

[2] Notice of Proposed Rule Making, PR Docket No. 89-552, 4 FCC Rcd 8593, 8599 (1989); Report and Order, 6 FCC Rcd 2356, 2365 (1991) [hereinafter *Report and Order*].

[3] *Report and Order*, 6 FCC Rcd at 2365.

[4] For example, for nationwide applicants, we adopted rules (1) prohibiting a person or entity from holding any interest in mutually exclusive applications; (2) requiring the submission of certified financial data showing that the applicant has the finances to construct 40 percent of the system and operate it for four years; (3) imposing stringent construction requirements; and (4) prohibiting license transfers and the leasing of excess capacity until certain specified conditions have been satisfied. With respect to the local channels, we adopted cross-ownership and construction requirements similar to those adopted for the nationwide authorizations. For example, we require that licensees must construct and have local systems in operation within eight months of the license grant, and we prohibit license transfers until the facilities are fully constructed.

[5] Of the nearly 60,000 applications filed, only 174 are for nationwide authorizations.

[6] Our alarm with regard to speculative filings is particularly acute because of our recent experience in the 900 MHz private land mobile context. Specifically, our records reflect that in response to the allocation of channels in the 900 MHz band for use by Specialized Mobile Radio systems (SMRs), we received 58,480 applications for 920 possible license grants. Of the 822 SMR licenses granted, 265 have been cancelled for failure to meet the Commission's construction requirements.

[7] *See* In re Amendment of Part 22 to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service, CC Docket Nos. 90-6, 85-388, 69 RR2d 1277 (1991)(comparative hearings are particularly ill-suited where the differences between applicants and their proposed systems are relatively negligible); *see also* In re Amendment of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, CC Docket No. 83-1096, 98 FCC 2d 175, 186 (1984)(same), *modified*, 101 FCC 2d 577, *further modified*, 59 RR2d 407 (1985), *aff'd in part and rev'd in part*, Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551 (D.C. Cir. 1987).

of spectrum associated with each local license, it would be markedly inefficient for us to devote our resources to the comparative evaluation of local applicants.

4. In contrast, the potential value of the nationwide authorizations, the small number of nationwide licenses available, and the amount of spectrum associated with each nationwide license cause us to question whether the public interest would be better served by the use of procedures more exacting than the lottery process to select nationwide applicants. Consequently, we solicit commenters' views regarding the best means, using the tools currently available to us, to ensure that only the most qualified entities are selected for nationwide licensing. Specifically, commenters are requested to address the relative advantages and disadvantages of comparative procedures as opposed to random selection, and to discuss the likelihood that comparative hearings will successfully identify significant distinctions between applicants and their ability to use the nationwide authorizations effectively. Commenters are also requested to discuss whether the benefits of employing comparative procedures to select nationwide licensees outweigh the cost and time associated with the comparative hearing process. In particular in this regard, we solicit comment with respect to the administrative workability of using comparative procedures to evaluate the number of applicants seeking nationwide licensing, and request commenters' views as to the best means, from an administrative standpoint, for conducting comparative proceedings.

5. As indicated, we also seek comment with respect to whether the distinctions between the nationwide commercial and non-commercial authorizations cause a particular selection process to be more or less suitable in either context. For example, commenters are asked to address the significance of the fact that the commercial nationwide authorizations will be available to the licensees' numerous customers, whereas the noncommercial channels will be used almost exclusively by four single entities for the purpose of satisfying their internal nationwide communications needs, and to discuss whether this or any other characteristics unique to either set-aside render selection via lottery or comparative procedures particularly appropriate.

6. In addition, in recognition of the special status of the non-commercial nationwide channels, we solicit comment as to the efficacy of adopting stricter operating and construction standards as a means for narrowing the non-commercial pool of applicants to only those entities with the greatest interest and demonstrated capability to develop a non-commercial nationwide communications system. In particular, commenters are asked to discuss the merits of rule changes that would (1) require nationwide non-commercial licensees to construct at least one base station in a minimum of 70 markets within five rather than ten years of licensing;[8] and (2) require applicants for nationwide non-commercial licensing to demonstrate an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application. Commenters favoring the imposition of a requirement that applicants demonstrate an actual presence or long-term business plan necessitating internal communications capacity in 70 or more markets are further requested to suggest a methodology for making this showing. Although we believe the adoption of the rule changes set forth in the preceding paragraph would be useful in conjunction with either random selection procedures (as entry criteria) or comparative hearings (as additional basic qualifications),[9] commenters are asked to discuss whether, in their view, the strengthening of the construction and operational requirements would be more effective in the context of a particular form of selection procedure.[10]

7. In the event that we decide to use comparative selection procedures in either the commercial or non-commercial nationwide context or both, we propose to adopt specific comparative criteria that will focus on the following three general areas: (1) the applicant's ability to demonstrate that it can provide service more quickly than required by the basic qualifications; (2) the applicant's ability to construct more than the minimum of one base station in a greater number of geographic areas than the 70 required as a basic qualification; and (3) the applicant's ability to demonstrate that its proposed use or system design is exceptionally innovative or proficient. Under the first of these three criteria, we propose to require applicants to submit documentation reflecting that they have a firm financial commitment and business plan that will allow them to construct and operate base stations sooner than required under the basic qualification construction benchmarks.[11] Similarly, an applicant seeking comparative credit for providing expanded service pursuant to the second factor set forth above would be required to submit an additional financial showing demonstrating that it will in fact be able to serve additional markets. We also propose to provide comparative credit under the second general area to an applicant able to demonstrate that its system can readily expand service within a market to satisfy growing service demand and expansions in population.[12] Applicants seeking to obtain comparative credit under the third factor, technological innovation, would also be credited for prior experience in operating communications systems or manufacturing communications

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[8] The rule adopted in the *Report and Order* contains a 10-year construction requirement. *See* 47 C.F.R. § 90.725(a).

[9] If we decide to use comparative procedures to select nationwide licensees, the entry criteria adopted in the *Report and Order*, *see, e.g.*, 47 C.F.R. §§ 90.713, 90.725, would serve as basic qualifications each applicant would be required to meet.

[10] We also ask commenters to discuss whether application filing fees should be refunded to applicants for nationwide commercial or non-commercial authorizations who, in light of any rule changes stemming from this proceeding, voluntarily withdraw prior to commencement of the selection process. In this connection, we note that we interpret 47 C.F.R. § 1.1111(a)(4) to permit us to refund the application fees paid by any such entity.

[11] *See* 47 C.F.R. § 90.725. We propose to require applicants seeking comparative credit to produce a new accelerated construction schedule. Applicants seeking comparative credit for expedited construction would be required to fulfill the new construction obligation or forfeit their license and all construction completed to that point.

[12] A similar criterion was adopted when the Commission used comparative procedures in the cellular context. *See, e.g.*, An Inquiry into the Use of the Bands 825-845 and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318, FCC No. 81-161, 86 FCC 2d 469, 502-03 (1981).

equipment in a manner indicative of their ability to operate effectively a nationwide system of the type proposed.[13]

8. We request commenters to discuss the effectiveness of these three general areas of focus in terms of the likelihood (that they will produce meaningful distinctions between applicants as well as their administrative workability. Commenters are also requested to discuss whether different comparative criteria should be formulated for the commercial and non-commercial channels. For example, the ability to provide service to expanded areas of population may be a criterion of little utility in the non-commercial setting. By the same token, it may be useful in the non-commercial context to give comparative credit to applicants able to demonstrate that their proposed communications plan will be of value to their business by causing quantitative increases in efficiency and productivity. Furthermore, although we propose that each comparative factor be given equal weight, we solicit commenters' views as to whether certain criteria should be weighed more heavily than others. In addition, commenters are asked to set forth their views as to how applicants should be required to make the various showings needed to obtain comparative credit pursuant to each factor set forth above, and to suggest any additional criteria that will be of assistance in identifying the best qualified applicants. Finally, we request commenters to suggest a methodology for the assignment of comparative credits in a manner that takes into account various combinations in the three areas of focus. Specifically, commenters are asked to discuss the feasibility of designing a method that will reduce the various criteria to a single common denominator or ranking procedure, thereby permitting meaningful comparison.

III. CONCLUSION

9. In summary, we are issuing this *Further Notice of Proposed Rule Making* to solicit commenters' views and to create a record for ascertaining the best means within our statutory authority for selecting nationwide 220-222 MHz licensees. In addition, we take action proposing general comparative criteria to be used in the event that comparative selection procedures are chosen. An appendix reflecting the proposed rule changes is attached.

IV. PROCEDURAL MATTERS

Exparte Rules - Non-Restricted Proceeding

10. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

Initial Regulatory Flexibility Analysis

11. We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding. Any action taken as the result of this *Further Notice of Proposed Rule Making* is unlikely to have a significant economic effect on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act, because the significant capital expenditures involved in applying for the 220-222 MHz nationwide authorizations generally renders these channels suitable only for large enterprises. The Secretary shall send a copy of this *Further Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Comment Dates

12. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **March 2, 1992,** and reply comments on or before **March 23, 1992.** To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you wish for each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. For further information concerning this proceeding, contact Karen Kincaid, Private Radio Bureau, Room 5202, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 634-2443.

14. Authority for issuance of this *Further Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 C.F.R. Part 90 is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. 47 C.F.R. § 90.711 is amended by revising paragaraph (a) to read as follows:

[13] Commenters are asked to set forth specific proposals as to how an applicant's prior experience should be given comparative credit. For example, we request commenters to discuss whether a point credit system is appropriate for this criterion and, if so, how points would best be awarded.

§ 90.711 Processing of applications.

(a) Applications will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (i.e., if all applications were granted, violation of the provisions of § 90.723(f) of this part would result), or when multiple applications for nationwide systems are filed on the same day for a number of systems in excess of those available in the relevant category (10-channel non-commercial, 5-channel non-commercial or 5-channel commercial), these applications will be considered mutually exclusive. All mutually exclusive nationwide applications will be resolved through the use of comparative procedures.

* * * * *

3. 47 C.F.R. § 90.713 is amended by adding paragraph (a)(6) to read as follows:

§ 90.713 Entry Criteria.

(a) * * *

(6) Applicants for non-commercial nationwide licensing must also submit a written certification demonstrating an actual presence or long-term business plan necessitating internal communications capacity in the 70 or more markets identified in the license application.

* * * * *

4. 47 C.F.R. § 90.725 is amended by revising paragraph (h) to read as follows:

§ 90.725 Construction requirements.

* * * * *

(h) Licensees granted non-commercial nationwide authorizations will be required to construct base stations in a minimum of 70 markets designated in the license application within five years of the initial license grant.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-168

In the Matter of

Codification of the Commission's
Political Programming Policies

ERRATUM

Released: January 24, 1992

The *Report and Order* in this proceeding released December 23, 1991, (FCC 91-403) amended existing rules and added new rule sections to Parts 73 and 76 of the Commission's rules, as indicated in Appendix B. The *Report and Order* has been corrected in accordance with the following:

(1) The *Report and Order* at p.60, in Section 73.1941(b), states in part: " . . . the term 'use' means candidate appearance (including by voice or picture) or political advertisement . . . ." The words "or political advertisement" should be deleted.

(2) Similarly, with respect to cable television systems, the *Report and Order* at pp.70-71, in Section 76.205, states in part: " . . . the term 'use' means candidate appearance (including by voice or picture) or political advertisement . . . ." The words "or political advertisement" should be deleted.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Jimmy Shillington FOIA Control No. 91-136

Request for Inspection
of Records.

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 1992; Released: January 31, 1992

By the Commission:

1. The Commission has before it for consideration an Application for Review filed by Jimmy Shillington, seeking review of a ruling entered by the Chief, Field Operation Bureau (FOB), which denied, in part, Mr. Shillington's Freedom of Information Act (FOIA) request. *See* 5 U.S.C. § 552(b). In his initial request, Mr. Shillington sought access to Commission records compiled in the course of an investigation of a now dismissed complaint against his business firm, Quality Transportation Company, for alleged operation on unauthorized radio frequencies.

2. FOB granted his request in large part but withheld the names of the complainant and an informant as confidential and, thus, exempt from disclosure. FOB stated that the complainant had explicitly requested confidentiality and that the informant had cooperated in a law enforcement proceeding under circumstances from which an assurance of confidentiality could reasonably be inferred. *See United Technologies Corp. v. NLRB*, 777 F.2d 90, 94 (2d Cir. 1986); *see also Schmerler v. FBI*, 900 F.2d 333, 336 (D.C. Cir. 1990). On appeal, Mr. Shillington contends that the Commission has no further use of any information from these individuals and, therefore, the Commission could release their identities without compromising its investigatory efforts.

3. FOB properly withheld the identities of its confidential sources. Exemption 7(D) of the FOIA permits the Commission to withhold the identity of informants, notwithstanding the completion of the law enforcement proceeding. *See Schmerler v. FBI*, 900 F.2d at 336. To disregard the confidential status of our sources in this case could inhibit our investigatory efforts in other matters and hamper the production of information in the future. *See Id.*

4. Accordingly, for the reasons set forth herein, IT IS ORDERED That the Application for Review filed by Jimmy Shillington IS DENIED. The Requestor may seek judicial review of this decision pursuant to 5 U.S.C. § 552(a)(4)(B).

5. The officials responsible for this action are the following Commissioners: Alfred C. Sikes, Chairman, James H. Quello, Sherrie P. Marshall, Andrew C. Barrett, Ervin S. Duggan.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Rochester Telephone Corporation Tariff F.C.C. No. 1	Transmittal Nos. 162 and 164

ORDER

Adopted: January 22, 1992; Released: January 22, 1992

By the Chief, Common Carrier Bureau:

1. On January 2, 1992, Rochester Telephone Corporation (Rochester) filed Transmittal 162, scheduled to become effective January 23, 1992.[1] As revised by its subsequent Transmittal No. 164, Rochester seeks to increase temporarily its multi-line business end user common line (EUCL) rates and to adopt a temporary surcharge on its switched access billings to interstate customers for the remainder of the current tariff year.[2] These tariff revisions will enable Rochester to begin recovering the costs which it incurred as a result of a March 1991 ice storm in the Rochester, New York, area. These temporary charges would expire June 30, 1992. On January 9, 1992, both American Telephone and Telegraph Company (AT&T) and US Sprint Communications Company Limited Partnership (Sprint) petitioned for suspension and investigation of this transmittal and MCI Telecommunications Corporation (MCI) petitioned for rejection. Rochester filed a reply on January 15, 1992.

2. Rochester asserts that the ice storm that devastated its service area on March 3, 1991, caused damage well beyond what could be expected or repaired in the normal course of business. Rochester contends that the storm occurred at the end of Rochester's penultimate quarter under rate of return regulation, leaving Rochester no rate of return period for recovery. Rochester Description and Justification (D&J) at 6-11. While Rochester entered price cap regulation as of July 1, 1991, that regulatory scheme makes no provision for recovery of expenses incurred while the carrier was regulated under rate of return regulation. *Id.* at 19-21. Thus, Rochester seeks a temporary rate increase in the form of a surcharge to enable it to recover these expenses without altering its existing price cap rates and indexes. *Id.* at 5-6.

3. AT&T, MCI, and Sprint oppose Rochester's proposal, stating that Rochester's rate of return must fall below the 10.25 percent price cap low end adjustment mark for the full 1991 calendar year before any adjustment could be considered. AT&T Petition at 3-4; MCI Petition at 3; Sprint Petition at 3. Even if some adjustment were justified, AT&T argues, it should be to CCL only, not TS. Since Rochester shows that all its storm-related expenses and all the reduction in Rochester's anticipated return are attributable to common line, AT&T argues that the price cap rules require that exogenous adjustments be limited, on a cost-causative basis, to the common line rate elements. AT&T Petition at 5-6.

4. AT&T and Sprint also contend that Rochester has not met the heavy burden of proof imposed by the price cap rules for such rate increases and that Rochester's adjustment must therefore be suspended and investigated. *Id.* at 6; Sprint Petition at 2. In particular, AT&T and Sprint claim that Rochester is not eligible for exogenous treatment of these expenses because the Commission expressly rejected suggestions that an exogeneous cost factor be added to the LEC price cap plan for extraordinary costs arising from natural disasters such as this ice storm. AT&T Petition at 4-5; Sprint Petition at 2-3.

5. AT&T next contends that, since Rochester's indexes for the common line and TS baskets are already at their maximum level, Rochester is, in effect, seeking to file rates above its existing caps without the required justification. AT&T Petition at 4. MCI adds that Rochester has failed to adjust its revenue requirement to reflect the increased demand which likely occurred following the ice storm. MCI Petition at 5. MCI concludes that Rochester's showing fails to support a rate increase under price cap regulation, and MCI characterizes Rochester's surcharge as retroactive ratemaking. *Id.* at 4-5. Finally, Sprint urges the Commission to issue an accounting order to monitor the impact of Rochester's rate increase. Sprint Petition at 3.

6. Rochester notes in its reply that the surcharge to recover the allocated interstate ice storm expenses parallels a request that it submitted last year to the New York State Public Service Commission (NYPSC) for recovery of the incremental ice storm expenses allocated to the intrastate jurisdiction and that the amount which Rochester seeks to recover reflects the adjustments made by the NYPSC. Rochester Reply at 1-2. Rochester also notes that it has obtained the Bureau's approval for its accounting treatment of these expenses. *Id.* at 2. Rochester notes that the ice storm occurred while Rochester was still subject to rate of return regulation and that these tariff revisions are not designed to increase Rochester's rate of return for the 1990-91 rate year, 1991 calendar year, or 1991-92 rate year, but are intended solely to permit Rochester to recover the specific, identified extraordinary expenses in-

[1] Rochester filed a similar tariff transmittal last year. Rochester Telephone Corporation, Tariff F.C.C. No. 1, Trans. No. 149, filed Aug. 23, 1991. However, Rochester subsequently withdrew that transmittal pending approval of its accounting treatment of certain expenses by the Common Carrier Bureau (Bureau). Rochester D&J at 4-5.

[2] Under Rochester's current approach, Rochester would, for the remainder of the 1991-92 tariff year, increase its EUCL rate from $3.70 to $3.94 for multi-line business customers and users of CENTREX, as well as impose a 2.86 percent surcharge on its switched access billings to interexchange customers for traffic sensitive (TS) and carrier common line (CCL) services. Then, in its April 1992 annual access tariff filing, Rochester expects to readjust its EUCL rate and the surcharge as necessary to recover the remainder of these expenses in the 1992-93 tariff year. In Transmittal 162, Rochester identified this approach as an alternative to another approach under which Rochester would recover these costs from TS and CCL only. However, Rochester now seeks to tariff that alternate approach. *See* Rochester Telephone Corporation, Tariff F.C.C. No. 1, Trans. No. 164, filed Jan. 22, 1992.

curred in its emergency restoration efforts. *Id.* at 3-5. Next, Rochester contends that MCI's argument that the surcharge constitutes retroactive ratemaking is incorrect as the surcharge is calculated purely on extraordinary costs, not on any rate of return projections. *Id.* at 8-10.

7. Moreover, because Rochester's surcharge is not tied to a particular earned return, Rochester urges the Commission to reject petitioners' request that any recovery be limited to a return of 10.25 percent. Rochester adds that such a request is also inconsistent with the accounting treatment already sanctioned by the Bureau. *Id.* at 6. Rochester further argues that even if the Commission were to apply price cap regulation to this transmittal, the extraordinary expenses that Rochester incurred in its emergency restoration efforts would be eligible for exogenous treatment. *Id.* at 7. Rochester also notes that the post-storm increase in demand anticipated by MCI did not in fact occur. *Id.* at 15. In response to AT&T's claim that Rochester should not impose a surcharge on both its CCL and TS rate elements, Rochester argues that its surcharge is designed to recover its storm related expenses from those customers who benefitted from Rochester's extraordinary restoration efforts and that it is therefore consistent with accepted principles of cost causation. *Id.* at 17-18.

8. The Common Carrier Bureau has reviewed Rochester's Transmittal Nos. 162 and 164, the petitions filed by AT&T, MCI, and Sprint as well as Rochester's reply to those petitions. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

9. Therefore, IT IS ORDERED that the petitions to suspend and investigate Rochester Telephone Corporation Tariff F.C.C. No. 1, Transmittal No. 162, filed by American Telephone and Telegraph Company and US Sprint Communications Company Limited Partnership, and the petition to reject the referenced tariff filed by MCI Telecommunications Corporation, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Capital Network Systems, Inc.	**CC Docket No. 91-326**
Conquest Telecommunications, Inc.	**CC Docket No. 91-327**
Com Systems, Inc.	**CC Docket No. 91-329**
International Pacific, Inc.	**CC Docket No. 91-330**
Peoples Telephone Co., Inc.	**CC Docket No. 91-331**
U.S. Long Distance, Inc.	**CC Docket No. 91-335**

ORDER

Adopted: January 15, 1992; Released: January 24, 1992

By the Commission:

I. INTRODUCTION

1. On November 8, 1991, the Common Carrier Bureau issued orders directing 12 interstate operator service providers (OSPs) whose rates, the Bureau found upon review, appear to be unjust and unreasonable, to demonstrate the reasonableness of their rates (or reduce their rates) and to announce at the beginning of each call handled by the OSP that its rates are available on request.[1] The captioned OSPs have requested stay of the announcement requirement imposed by the *Rate Review Orders* pending Commission consideration of applications for review of those orders.[2] Petitioners have not sustained their burden of demonstrating that the requested stay is warranted. We therefore deny the petitions for stay.

II. BACKGROUND

2. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) requires, *inter alia*, that OSPs file informational tariffs containing their rates and charges.[3] If the rates and charges filed by a particular OSP appear, upon review by the Commission, to be unjust or unreasonable, the Commission may require the OSP to demonstrate that its rates are just and reasonable.[4] The Commission may also require the OSP to announce, at the beginning of each call that it handles, that its rates are available upon request.[5] In other words, the Act does not establish the announcement requirement as a sanction to be imposed only in the event that the Commission finally determines that an OSP's rates are unjust or unreasonable. Rather, we are authorized to impose this announcement requirement instead of or in conjunction with the requirement that the OSP demonstrate that its rates are just and reasonable. The Commission thus may use the announcement requirement in order to afford consumers a degree of protection in the event that the rates contained in an OSP's informational tariff appear to be unjust and unreasonable. By contrast, if rates filed by a common carrier in a traditional tariff appear to be unjust or unreasonable, the Commission may protect the public by suspending the tariff pending investigation.

3. In addition to the obligation to file informational tariffs mentioned above, TOCSIA imposes various information disclosure and operating requirements on OSPs and call aggregators and charges the Commission with the responsibility of monitoring and regulating the activities of OSPs and aggregators. In discharging our duties under TOCSIA, we have initiated several proceedings including a rate compliance proceeding which TOCSIA requires us to conduct.[6] As part of that proceeding, the Bureau has directed OSPs to file periodic reports detailing their rates, complaints concerning their service, and the costs that

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[1] Advanced Technology Cellular Telecommunications, CC Docket No. 91-324, DA 91-1379, released Nov. 8, 1991 (Com.Car.Bur.); Cherokee Communications, Inc., CC Docket No. 91-325, DA 91-1380, released Nov. 8, 1991 (Com.Car.Bur.); Capital Network Systems, Inc., CC Docket No. 91-326, DA 91-1381, released Nov. 8, 1991 (Com.Car.Bur.); Com Systems, Inc., CC Docket No. 91-329, DA 91-1384, released Nov. 8, 1991 (Com.Car.Bur.); Conquest Telecommunications Services, CC Docket No. 91-327, DA 91-1382, released Nov. 8, 1991 (Com.Car.Bur.); CPS Operator Services, Inc., CC Docket No. 91-328, DA 91-1383, released Nov. 8, 1991 (Com.Car.Bur.); International Pacific, Inc., CC Docket No. 91-330, DA 91-1385, released Nov. 8, 1991 (Com.Car.Bur.); Peoples Telephone Company, Inc., CC Docket No. 91-331, DA 91-1386, released Nov. 8, 1991 (Com.Car.Bur.); South Texas Phone, Inc., CC Docket No. 91-332, DA 91-1387, released Nov. 8, 1991 (Com.Car.Bur.); TelTrust, Inc., CC Docket No. 91-333, DA 91-1388, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Fiberline Communications, CC Docket No. 91-334, DA 91-1389, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Long Distance, Inc., CC Docket No. 91-331, DA 91-1390, released Nov. 8, 1991 (Com.Car.Bur.) (*Rate Review Orders*).

[2] The six petitioners have filed three pleadings which request essentially identical relief. On November 13, 1991, Capital Network Systems, Inc. (CNS) filed an "Emergency Motion for Stay" (CNS Motion). On the same day, Conquest Telecommunications, Inc. (Conquest), Com Systems, Inc. (CSI), International Pacific, Inc. (IPI), and U.S. Long Distance, Inc. (USLD) jointly filed a pleading which they style "Motion for Stay of Branding Requirements" (IPI Petition). Finally, on November 15, 1991, Peoples Telephone Company (PTC) filed an "Emergency Petition for Stay" (PTC Petition). No responsive pleadings have been filed.

[3] *See* 47 U.S.C. § 226(h)(1)(A). TOCSIA is codified as Section 226 of the Communications Act of 1934.

[4] *See* 47 U.S.C. § 226(h)(2)(A).

[5] *See* 47 U.S.C. § 226(h)(2)(B).

[6] We initiated this proceeding as Phase II of CC Docket No. 90-313, Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Further Notice of Proposed

they incur in providing service to the public.[7] The OSPs' reports must also include a report of sample charges that the OSP would assess for certain calls that are typical of operator assisted calls handled by American Telephone and Telegraph Company (AT&T). These reports serve principally to assist us in fulfilling monitoring and reporting responsibilities under Section 226(h)(3) of the Act, 47 U.S.C. § 226(h)(3). In addition, however, these reports provide valuable data for our review of the informational tariffs.

4. Review of the informational tariffs and reports of sample charges filed by the captioned OSPs revealed that these OSPs would assess as much as $8.71 for an eight-minute call.[8] The Bureau concluded that these rates appear to be unjust and unreasonable and therefore directed petitioners either to demonstrate that their rates are just and reasonable or to reduce their rates to a just and reasonable level.[9] In addition, the: Bureau directed petitioners to begin announcing, at the beginning of each call that they handle, that their rates and charges are available upon request.[10] Petitioners' requests for stay of the announcement requirement followed.

III. PLEADINGS

5. Petitioners argue that they are entitled to a stay of the announcement requirement under the four-part test that has been used by the courts and this Commission.[11] Petitioners assert that they are likely to succeed on the merits in seeking permanent equitable relief from this Commission or a court. Petitioners also argue that they will be irreparably harmed absent a stay. In contrast, petitioners contend, no other party would be harmed by grant of a stay. Finally, petitioners assert that the public interest would be served by grant of the requested stay.

6. Petitioners argue that this Commission or a reviewing court is likely to reverse the Bureau's imposition of the announcement requirement. CNS contends, for example, that the Bureau's alleged failure to consider CNS's cost data renders the imposition of the announcement requirement arbitrary and capricious. CNS Motion at 7-10. CNS also contends that the Bureau's action denies CNS procedural due process. *Id.* at 10-16.[12] IPI advances a similar position and further suggests that the *Rate Review Orders* are overbroad because they would require petitioners to announce that their rates are available upon request at the beginning of each call that petitioners handle. IPI suggests that the Bureau did not find that petitioners' rates for each call they handle appear unreasonable and that the announcement requirement is therefore likely to be reversed on review. IPI Petition at 10-16.

7. Petitioners also assert that they will suffer irreparable harm if we do not grant the requested stay. Petitioners cite the cost of complying with the announcement requirement, which they contend they will be unable to recoup. CNS Petition at 16-17. Petitioners also assert that they will suffer competitive harm if they must comply with the announcement requirement. *Id.* at 17-19; IPI Petition at 16-17; PTC Petition at 5-7. CNS and IPI also argue that other interested parties would not be harmed by grant of the requested relief. CNS Petition at 19; IPI Petition at 17-18. Finally, petitioners argue that the public interest either will not be harmed by a stay or will actually be furthered by grant of their petitions. They argue that OSPs are already required by TOCSIA to post a notice that their rates are available upon request on or near the telephone instrument. They therefore conclude that a stay of the announcement requirement will serve the public interest. CNS Petition at 20-21; IPI Petition at 18-19; PTC Petition at 9-10.

IV. DISCUSSION

8. We deny the petitions for stay of the announcement requirement imposed by the *Rate Review Orders*. Petitioners have not demonstrated that this requirement will cause them irreparable harm. Petitioners have made no showing as to the cost of complying with the announcement requirement nor have they demonstrated that they would be unable to recover any added costs this requirement might impose.[13] The announcement requirement is

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Rulemaking, 6 FCC Rcd 120 (1990).

[7] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II, 6 FCC Rcd 2314 (Com.Car.Bur. 1991) (*OSP Reporting Requirements Order*).

[8] *See* Conquest Telecommunications, Inc., CC Docket No. 91-327, DA 91-1382, released Nov. 8, 1991 (Com.Car.Bur.). The highest rates reported by the other five petitioners were, in descending order: CSI -- $8.09; PTC -- $7.85; IPI -- $7.70; CNS -- $7.64; and USLD -- $7.54.

[9] Eight of the 12 OSPs that the Bureau directed to submit rate justifications subsequently revised their tariffs to reduce their rates or filed additional information. The Bureau found that these eight OSPs no longer charge rates that prompted these proceedings. It therefore terminated the proceedings it had initiated with respect to these eight OSPs. *See* Cherokee Communications, Inc., CC Docket No. 91-325, DA 91-1547, released Dec. 13, 1991 (Com.Car.Bur.); Advanced Technology Cellular Telecommunications, CC Docket No. 91-324, DA 91-1615, released Dec. 23, 1991 (Com.Car.Bur.); Com Systems, Inc., CC Docket No. 91-329, DA 91-1617, released Dec. 23, 1991 (Com.Car.Bur.); Conquest Telecommunications Services, CC Docket No. 91-327, DA 91-1616, released Dec. 23, 1991 (Com.Car.Bur.); South Texas Phone, Inc., CC Docket No. 91-332, DA 91-1618, released Dec. 23, 1991 (Com.Car.Bur.); TelTrust, Inc., CC Docket No. 91-333, DA 91-1619, released Dec. 23, 1991 (Com.Car.Bur.); U.S. Fiberline Communications, CC Docket No. 91-334, DA 91-1620, released Dec. 23, 1991 (Com.Car.Bur.); U.S. Long Distance, Inc., CC Docket No. 91-331, DA 911614, released Dec. 23, 1991 (Com.Car.Bur.). The remaining four OSPs -- CNS, CPS, IPI, and PTC -- were required to submit their justifications on December 23, 1991.

[10] The Bureau directed petitioners to begin making this announcement within ten days of release of the *Rate Review Orders*. The Bureau later delayed the effective date of this requirement to December 18, 1991, in order to allow OSPs sufficient time to make the technological changes needed to make the announcement. *Advanced Technology Cellular Telecommunications*, CC Docket No. 91-324, *et al.*, DA 91-1438, released Nov. 15, 1991 (Com.Car.Bur.). The Bureau later postponed the announcement requirement to January 15, 1992 *Advanced Technology Cellular Telecommunications*, CC Docket No. 91-324, *et al.*, DA 91-1548, released Dec. 13, 1991 (Com.Car.Bur.).

[11] *See* Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Co. v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977).

[12] PTC concurs in these arguments and incorporates CNS's petition in its petition by reference. PTC Petition at 7-9.

[13] *Cf.* Washington Metropolitan Area Transit Co. v. Holiday Tours, *supra*, 559 F.2d at 843 where the Court found that

simply a cost of doing business in the regulated OSP market and is a cost that can be passed along to customers. Further, we are not convinced by petitioners' assertions that other parties and the public interest would not be harmed by grant of the stay.[14] In light of the apparent unreasonableness of the petitioners' rates, failure by the petitioners to provide an explicit announcement regarding the availability of rate information would be likely to deny consumers the opportunity to make an informed choice regarding the level of charges they will incur for operator services.

9. Accordingly, IT IS ORDERED that the emergency motion for stay filed by Capital Network Systems, Inc.; the motion for stay filed by Conquest Telecommunications, Inc., Com Systems, Inc., International Pacific, Inc., and U.S. Long Distance, Inc.; and the emergency petition for stay filed by Peoples Telephone Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

petitioner had demonstrated irreparable harm in "its destruction in its current form." Petitioners have not made a comparable showing.

[14] We affirm the proposition that "[i]n litigation involving the administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial." Virginia Petroleum Jobbers v. FPC, *supra*, 259 F.2d at 925.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-368

In the Matter of

Computer III Remand Proceedings

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: January 9, 1992; Released: January 24, 1992

By the Commission:

I. INTRODUCTION

1. On December 17, 1990, the Commission released a *Report and Order*[1] in this proceeding, which adopted three narrowly focused proposals to reinstate certain *Computer III* rules that the United States Court of Appeals for the Ninth Circuit had vacated in *California v. FCC*.[2] BellSouth Corporation (BellSouth) has filed a petition for partial reconsideration of the *Report and Order*, requesting that we expand the scope of this proceeding to revisit our long-standing classification of protocol processing as an enhanced service.[3] We adhere to our conclusion not to reconsider our classification of protocol processing in this proceeding, and deny BellSouth's petition.

II. BACKGROUND

2. In the *Computer II* proceeding,[4] the Commission established a regulatory distinction between enhanced services, which would be offered on a non-tariffed competitive basis, and basic services, which would be subject to Commission regulation under Title II of the Communications Act. Under the *Computer II* regime, AT&T and the BOCs generally were permitted to offer enhanced services only through structurally separate subsidiaries. The Commission concluded that protocol processing was an enhanced service.[5]

3. In the *Computer III* proceeding that followed, the Commission permitted AT&T and the BOCs to offer enhanced services integrated with their basic offerings, provided that those carriers complied with certain nonstructural safeguards designed to protect competing enhanced service providers from possible anticompetitive conduct. The Commission also sought comment on, and reaffirmed, the *Computer II* classification of protocol processing as enhanced.[6]

4. On review, the United States Court of Appeals for the Ninth Circuit in *California v. FCC* held that the Commission had not adequately justified the decision to replace structural separation with nonstructural safeguards for the BOCs' enhanced service operations.[7] The Court also held that certain Commission preemption decisions had not been sufficiently justified.[8] No party briefed the protocol processing classification issue, and the Court did not address that question.[9] However, the Court vacated the *Computer III* orders under review, including the order reaffirming the status of protocol processing as enhanced, and remanded the case to the Commission for further proceedings consistent with the Court's opinion.[10]

III. THE REMAND PROCEEDING

5. Two months after *California v. FCC* was decided, the Commission initiated this remand proceeding with the release of the August 6, 1990, Notice of Proposed Rulemaking.[11] In the *Notice*, we stated that the effect of the Ninth Circuit's decision vacating the *Computer III* orders under review was, generally, to return the telecommunications industry and the Commission to a *Computer II* regime. We noted that in several instances the Court's vacation of the *Computer III* orders appeared to affect regulatory changes that had not been challenged in the appellate proceedings. Because the legal basis for such regulations did not appear to have been eroded by the Ninth Circuit's action, we determined that expeditious action was possible and warranted to resurrect three of

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[1] *Computer III Remand Proceedings* (CC Docket No. 90-368), 5 FCC Rcd 7719 (1990) (*Report and Order*).

[2] *People of the State of California v. FCC*, 905 F.2d 1217 (9th Cir. 1990). The orders under review were: *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)* (CC Docket No. 85-229), 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration*), 2 FCC Rcd 3072 (1987) (*Phase II Order*).

[3] Comments and/or replies regarding the BellSouth petition have been filed by ADAPSO, BT Tymnet, Inc., Compuserve Incorporated, Integrated Communications Systems, Inc., International Business Machines Corporation, the NYNEX Telephone Companies, US Sprint Communications Company Limited Partnership, and U S West Communications, Inc.

[4] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *modified on recon.*, 84 FCC 2d 50 (1981) (*Computer II Reconsideration*), *modified on further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration*), *aff'd*, *Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[5] *See Computer II Final Decision*, 77 FCC 2d at 421-22; *Computer II Reconsideration*, 84 FCC 2d at 60-61.

[6] *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)* (CC Docket No. 85-229), Notice of Proposed Rulemaking, 50 Fed. Reg. 33581, 33593-33599 (Aug. 20, 1985); Supplemental Notice of Proposed Rulemaking, 51 Fed. Reg. 24410 (Jul. 3, 1986). *Phase I Order*, 104 FCC Rcd at 1092-1109; *Phase II Order*, 2 FCC Rcd 3074-82; *Phase II Reconsideration*, 3 FCC Rcd at 1152-58.

[7] *California v. FCC*, 905 F.2d at 1238-39.

[8] *Id.*, 905 F.2d at 1239-45.

[9] The *Phase II Reconsideration* is the subject of a separate pending judicial challenge in the Ninth Circuit. *BellSouth Corp. v. FCC*, Ninth Circuit No. 88-7290. Therefore, the parties that might have been inclined to brief the protocol processing issue apparently assumed that they could brief it in the subsequent review proceeding, *BellSouth v. FCC*. The Commission's motion to dismiss the BellSouth petition for review is pending before the Court.

[10] *Id.*, 905 F.2d at 1246.

[11] *Computer III Remand Proceedings* (CC Docket No. 90-368), 5 FCC Rcd 5242 (1990) (*Notice*).

those *Computer III* regulatory changes. First, we proposed to reinstate Open Network Architecture (ONA) obligations on the Bell Operating Companies (BOCs). Second, we proposed to permit AT&T to provide collocated enhanced services on an integrated basis pursuant to *Computer III* nonstructural safeguards. Finally, we proposed to reinstate certain *Computer III* decisions regarding Network Channel Terminating Equipment.[12]

6. We explicitly excluded from this expedited rulemaking other issues raised by the Court's vacation of the three *Computer III* orders. Thus, we reserved for a separate rulemaking proceeding those *Computer III* rules that the Ninth Circuit had specifically addressed.[13] As to the classification of protocol processing, the Commission found that no further action was needed. Specifically, we stated:

> Because the classification of protocol processing in *Computer III* merely reaffirmed the Commission's earlier classification of those services, the effect of the vacation order is to restore protocol conversion services to the *Computer II* status, which also was enhanced. There is thus no need to propose further consideration of this classification issue in this notice.[14]

7. In the *Report and Order*, we adopted the three specific regulatory proposals set forth in the *Notice*.[15] We also declined the suggestion, urged in comments filed by BellSouth and two other parties, that the Commission expand the scope of this proceeding to revisit the protocol processing issue.[16] We reiterated our position, taken in the *Notice*, that it was unnecessary to "reexamine the classification of protocol processing in this proceeding because the Ninth Circuit's opinion, by vacating certain *Computer III* orders, had no effect on the classification of protocol processing."[17]

IV. THE PLEADINGS

8. BellSouth's petition for reconsideration of the *Report and Order* challenges the Commission's procedural decision "not to readdress the regulatory classification of protocol processing" in this proceeding.[18] BellSouth argues that the Commission erred in concluding that the *California v. FCC* decision vacating certain *Computer III* orders had no effect on the classification of protocol processing as enhanced.[19] In fact, BellSouth had reopened the classification issue in the *Computer III* proceeding before reaffirming the existing classification on a new record, the Ninth Circuit's vacation of the pertinent *Computer III* orders does not merely reinstate the same *Computer II* classification. Rather, BellSouth claims the court decision leaves a regulatory void, which the Commission is now obligated to fill.[20]

9. BellSouth asserts that by adhering to the identical *Computer II* classification without affirmatively revisiting the merits of the issue, the Commission impermissibly ignores the new evidence compiled in the intervening *Computer III* proceeding, the result of which was vacated.[21] In BellSouth's view, the record of intervening technological, market, and regulatory changes developed in the *Computer III* proceeding, as well as unspecified subsequent developments, render the current classification contrary to the public interest.[22]

10. Opponents of BellSouth's petition argue that the Commission reasonably exercised its inherent discretion to determine the scope of the rulemaking proceedings.[23] Those opponents vigorously dispute BellSouth's assertion that the Commission has declined to address the protocol processing classification, despite new evidence bringing into question the viability of the existing rule.[24] They note that the Commission revisited and reaffirmed the *Computer II* classification in the *Computer III* proceeding, and that the Commission addressed all of the "new" developments that BellSouth asserts in support of further proceedings here.[25] The opponents assert that because the *California v. FCC* decision did not address the *Computer III* analysis of protocol processing, there is no serious reason to question the continued application of *Computer II* rules that the Commission reaffirmed in the vacated

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[12] *See Notice*, 5 FCC Rcd at 5242 (paras. 1 and 5 & n.15), 5243 (paras. 8-11).

[13] *See Notice*, 5 FCC Rcd at 5242 (para. 6). That proceeding has been commenced. *See Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards* (CC Docket No. 90-623), Notice of Proposed Rulemaking, 6 FCC Rcd 174 (1990).

[14] *Notice*, 5 FCC Rcd at 5242 n.17.

[15] *See Report and Order*, 5 FCC Rcd at 7719 (para. 1).

[16] *See Report and Order*, 5 FCC Rcd at 7722 (para. 24) & n.57.

[17] *See Report and Order*, 5 FCC Rcd at 7722 (para. 24).

[18] BellSouth Petition at 1. BellSouth's petition is very ambiguous with regard to whether its challenge is to the Commission's procedural decision to limit the scope of this proceeding, or to the merits of the classification itself. ADAPSO Opposition at 2-3. However, since we expressly did not seek comment on the classification issue in this proceeding, we could not, in any event, rule on the merits of that issue here. *See* 47 C.F.R. §§ 1.412(a), 1.413, 1.415 (requiring notice and opportunity for comment prior to adoption of rules changes). We thus interpret the petition as presenting only a procedural challenge to the scope of this proceeding.

[19] BellSouth Petition at 2-6.

[20] *Id.*

[21] *Id.* at 3, *citing Geller v. FCC*, 610 F.2d 973 (D.C. Cir. 1979). *See also* BellSouth Reply at 7.

[22] BellSouth Petition at 6-9; BellSouth Reply at 6-9. Three commenters agree generally with BellSouth's conclusion that the record in the vacated *Computer III* proceeding warrants revisiting the protocol processing issue, at least in some forum. *See* NYNEX Comments at 1-2; US West Comments at 1-2; ICS Reply at 1-3.

[23] *See* IBM Comments at 5-6; US Sprint Opposition at 6; BT Tymnet Opposition at 5-6.

[24] US Sprint Opposition at 7-9; BT Tymnet Opposition at 8-11; ADAPSO Opposition at 7-10; CompuServe Opposition at 4-7.

[25] BT Tymnet Opposition at 8-10; ADAPSO Opposition at

Computer III orders.[26] The opposing parties maintain that the Commission's classification of protocol processing as enhanced was and remains proper.[27]

V. DISCUSSION

11. We are not required continually to reopen settled rules.[28] In fact, a presumption exists that "'the policies committed to [the agency] by Congress... will be carried out best if the settled rule is adhered to.'"[29] BellSouth has not demonstrated that either the law or the facts have changed in a way that makes it necessary or desirable to reconsider our classification of protocol processing.

12. First, with regard to changes in the law, we believe the Ninth Circuit's vacation order in *California v. FCC* had no direct impact upon the Commission's existing classification of protocol processing as an enhanced service.[30] Under established law, the vacation of existing rules has the effect of automatically reinstating preexisting ones.[31] Here, the Ninth Circuit opinion was simply silent with respect to our longstanding classification of protocol processing as enhanced. Thus, the *Computer II* classification, which we reaffirmed in *Computer III*, was not affected by *California v. FCC*.

13. Second, BellSouth provides no factual justification to support revisiting our protocol processing classification. BellSouth's primary contentions are that new evidence developed since *Computer II* shows: (1) that protocol processing is not a stand-alone service but rather plays a vital role in the integrated delivery of packet switching service; and (2) that the application of ONA pricing parity rules to protocol processing is not cost-effective for users of BOC-provided protocol processing services, particularly those associated with the provision of multiplexed interconnection arrangements.[32] As BellSouth concedes,[33] the Commission addressed, in substance, both of these contentions in the course of retaining the current classification in the *Computer III* proceeding.[34] The decision in *California v. FCC* provides no indication that our analysis there was in error. Beyond the *Computer III* record, BellSouth notes only the possibility that it may present unspecified "additional 'new evidence'" based upon subsequent experience.[35]

14. BellSouth has failed to show that either the legal or the factual underpinnings of the Commission's regulatory classification of protocol processing have eroded. In the absence of such a showing, we decline to revisit in this proceeding our long-standing classification of protocol processing as an enhanced service.

VI. ORDERING CLAUSE

15. IT IS HEREBY ORDERED that pursuant to Sections 1, 4(i), 4(j), 201, 202, and 205 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 205, the Petition for Partial Reconsideration filed by BellSouth Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[26] *See* BT Tymnet Comments at 7-8; IBM Comments at 5 & n.8.

[27] BT Tymnet Opposition at 12-15; US Sprint Opposition at 7-9; IBM Comments at 2-4, 7-9; CompuServe Opposition at 6-7; ADAPSO Opposition at 10.

[28] *See, e.g., United Church of Christ v. FCC*, 911 F.2d 813, 818 (D.C. Cir. 1990); *NRDC v. Thomas*, 838 F.2d 1224, 1249 (D.C. Cir.), *cert. denied*, 488 U.S. 888 (1988).

[29] *Motor Vehicle Manufacturers Association v. State Farm Mutual*, 463 U.S. 29, 41-42 (1983), *quoting Atchison T. & S.F.R. Co. v. Wichita Bd. of Trade*, 412 U.S. 80-0, 807-08 (1973).

[30] *See Notice*, 5 FCC Rcd at 5242 n.16; *Report and Order*, 5 FCC Rcd at 7722 (para. 24).

[31] *See, e.g., Action on Smoking and Health v. CAB*, 713 F.2d 795, 797 (D.C. Cir. 1983); *Abington Memorial Hospital v. Heckler*, 750 F.2d 242, 244 (3d Cir. 1984).

[32] BellSouth Petition at 7-9; BellSouth Reply at 7-9.

[33] *See* BellSouth Reply at 7.

[34] In fact, by the time of the *Phase II Reconsideration* in *Computer III*, most of the "new evidence" Bell South alludes to had already been addressed. In the *Phase II Reconsideration*, which denied reconsideration of our decision in the *Phase II Order* to retain the existing protocol processing classification, we stated:

> We agree with those parties who observe that many of the arguments of the petitioners are not new. Arguments such as those related to ... the unitary nature of protocol processing and communications, constraints on the introduction of new [*e.g.*, digital] technology (such as ISDN and fast packet switching).... the effects of specific CEI/ONA requirements on competition... have been thoroughly considered in previous orders in this proceeding.

Phase II Reconsideration, 3 FCC Rcd at 1153-54.

[35] BellSouth Reply at 8.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — Transmittal No. 3585

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: January 23, 1992; Released: January 24, 1992

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) has filed Transmittal No. 3585 to modify Virtual Telecommunications Network Service (VTNS) Option 31. Option 31, as modified, is described by AT&T as a generally available offering designed and engineered for voice and data communications service among stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. The revisions to Option 31: decrease the basic charge; reduce rates in Schedule C; introduce a domestic usage volume pricing plan; modify the international usage volume pricing plan; modify the minimum annual charge; modify the changes provisions; introduce a domestic data transmission capability (DTC) volume pricing plan; introduce an international DTC, voice transmission capability and satellite transmission capability volume pricing plan; and modify the outage credit units. *See* AT&T Transmittal No. 3585 Description and Justification (D&J) at 2-5. Transmittal 3585 is scheduled to take effect on January 28, 1992.

2. US Sprint Communications Company Limited Partnership (Sprint), Williams Telecommunications Group, Inc. (Williams), and Competitive Telecommunications Association (CompTel) filed petitions to reject or suspend and investigate the transmittal on November 14, 1991. AT&T filed a reply on November 22, 1991.

3. Petitioners argue that the Commission's action in CC Docket 90-132[1] prohibits the Commission from accepting the revisions to Option 31. In the *Interexchange Order*, the Commission determined that, pending 800 number portability, 800 or inbound services cannot be legally bundled with other services, but also "grandfathered" existing options. *Interexchange Order* at para. 149. Petitioners argue that the Commission intended to grandfather only those options on file as of August 1. Sprint Petition at 3-4; Williams Petition at 4; CompTel Petition at 3.

4. The petitioners contend that the proposed revisions substantially alter Option 31, which they assert establishes that AT&T is using revisions as a way of avoiding the 800 bundling restriction. *See* Sprint Petition at 3; Williams Petition at 5; CompTel Petition at 2. Sprint and Williams allege that these modifications expand the scope of 800 service bundling in Option 31 and should not be permitted. *See* Sprint Petition at 4; Williams Petition at 5.

5. CompTel insists that these modifications are objectionable because they are material changes in the option. CompTel Petition at 1. Sprint asserts that the changes in Transmittal 3585 are not being made to serve the current customer but to make this offering more attractive to other customers and thereby avoid the Commission's prohibition on bundling of inbound service. Sprint Petition at 2-4. Williams alleges Tariff 12 cannot be justified under the principles enunciated in the *Tariff 12 Remand*[2] and *Sea-Land*[3] decisions, claiming that those cases require that the tariff filing or contract provide sufficient information to ensure compliance with statutory anti-discrimination provisions. *Id.* at 8-9. Williams argues that the Tariff 12 options are not generally available and are otherwise unlawful violations of Section 202(a) of the Communications Act. *Id.* at 9-12.

6. AT&T replies that this filing makes no fundamental change to Option 31; the rate elements, rate structure, and functionality remain essentially as originally filed. AT&T Reply at 1. AT&T asserts that the *Interexchange Order* does not prohibit revisions to existing VTNS options that include inbound capability. *Id.* at 2-5. Furthermore, AT&T contends that the proposed revisions to Option 31 would not thwart the policy of promoting competition for inbound services. *Id.* at 6.

7. The Commission's *Interexchange Order* precluded AT&T from including any inbound service in new Tariff 12 options until 800 numbers become portable, but "grandfathered" existing Tariff 12 options containing such service. *Interexchange Order* at para. 149. The Commission reasoned that, while this action would inconvenience customers who were in negotiations for Tariff 12 options, such customers would not have to reconfigure their existing service offerings, which existing customers would be required to do in the absence of the grandfathering provision. *Id.* at n.237. On November 25, 1991, the Commission released an Order extending the grandfathering provision of the *Interexchange Order* to include the additional Tariff 12 options that had been filed with the Commission before September 1, 1991.[4]

8. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3585, the revisions, and the pleadings. We conclude that this transmittal must be rejected because these revisions substantially change Option 31, which includes inbound service, and are therefore inconsistent with the Commission's decision in CC Docket 90-132 to prohibit any further bundling of inbound services in Tariff 12 Packages and in contract-based tariffs.[5]

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[1] Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5905-06 (1991) (*Interexchange Order*), *reconsidered in part*, FCC No. 91-930, Mimeo 38289 (released Nov. 25, 1991), *petitions for further recon. pending.*

[2] *MCI Telecommunications Corp. V. FCC*, 917 F.2d 30 (D.C. Cir. 1990).

[3] *Sea-Land Service, Inc. v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984).

[4] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Memorandum Opinion and Order, FCC No. 91-390, Mimeo 38289 (released Nov. 25, 1991).

[5] *See* American Telephone and Telegraph Company, Transmittal No. 3375, DA 91-1577 (released Dec. 19, 1991) at para. 11.

9. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3585, IS REJECTED.

10. IT IS FURTHER ORDERED that the petitions to reject or suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3585, filed by US Sprint Communications Company Limited Partnership, Williams Telecommunications Group, Inc., and Competitive Telecommunications Association, ARE GRANTED to the extent indicated herein, and otherwise ARE DENIED.

11. IT IS FURTHER ORDERED that American Telephone and Telegraph Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material and reinstating currently effective material. These revisions shall be scheduled to become effective on not less than one day's notice. For this purpose, Special Permission No. 92-13 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-271

In re Applications of

FINLEY WILLIS, JR.	File No. BPH-880503MA
MTW COMMUNCIATIONS	File No. BPH-880504MH
ANDERSON BROADCASTING COMPANY LIMITED PARTNERSHIP	File No. BPH-880504MV

For Construction Permit for a
New FM Station on Channel 271A
Lawrenceburg, Kentucky

APPEARANCES

John F. Garziglia and *Howard J. Barr* on behalf of Finley Willis, Jr.: *Stanley G. Emert, Esq.* on behalf of MTW Communications: *Leonard S. Joyce* on behalf of Anderson Broadcasting Company: and *Gary Schonman* on behalf of the Chief Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE WALTER C. MILLER

Issued: January 27, 1992; Released: January 31, 1992

1. Three applicants remain in this contest for a new FM station on Channel 271A (102.1 MHz) in Lawrenceburg, Kentucky: Finley Willis, Jr. (Willis), MTW Communications (MTW), and Anderson Broadcasting Company Limited Partnership (ABC).

2. After a lengthy interlocutory pleading cycle had run its course,[1] evidence was adduced on the following issues:

"MTW-1:

To determine whether MTW Communications lacked candor when in a July 11, 1990 Statement for the Record, they represented that 'publication [pursuant to 47 CFR 73.3594(g)] has been accomplished or is soon to be completed,' and if so, what impact that lack of candor has on MTW's qualifications to be a Commission licensee;

"MTW-2:

To determine the facts surrounding MTW's failure to comply with para. 2 of the prehearing order (FCC 90M-1713 released June 18, 1990) and what impact those facts have on MTW's fitness to be a Commission licensee;

"MTW-3:

To determine whether MTW Communications has abused the Commission's discovery processes, and if so, whether MTW is basically qualified to be a Commission licensee;[2]

"ABC-1:

To determine whether Anderson Broadcasting Company Limited Partnership is financially qualified to be a Commission licensee;

"ABC-2:

To determine whether Anderson Broadcasting Company lacked candor and/or misrepresented its financial qualifications to the Commission in BPH-880504MV, and, if so, what effect that has on their basic qualifications to be a Commission licensee;[3]

"HDO-1:[4]

To determine which of the proposals would, on a comparative basis, best serve the public interest; and

"HDO-2:

To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any."

3. In the Hearing Designation Order the Chief, Audio Services Division also provided for comparative coverage evidence to be introduced. *See* 55 F.R. 24927 *supra*, at para. 4. But this proved to be of no importance. The parties identified and offered a joint exhibit that provided that:

> "The area served by each applicant in this proceeding is well served by an excess of five FM services. Consequently, there is no comparative advantage to any applicant in this regard. Further, there is no material difference between any applicant in this proceeding in the number of overall persons served or in the amount of area served. Accordingly, each applicant disclaims any comparative advantage in the areas and populations covered, and in the number of services available within its one mV/m contour."

4. The burden of proceeding on Issues MTW-1 through MTW-3 *supra*, was placed on Finley Willis while the burden of proof remained on MTW. Both the burden of proceeding and the burden of proof on ABC Issues 1 and 2 were placed on ABC.

5. We held a prehearing conference on September 14, 1990; and hearing sessions on October 9, 10, 11, 1990, December 11, 1990, and on May 15, 1991. We closed the evidentiary record on May 15, 1991 (Tr. 1192).

6. All three applicants filed Proposed Findings of Fact and Conclusions of Law on the standard comparative issue (Phase I) on December 10, 1990 and Reply Findings on December 21, 1990. Willis and ABC, but not MTW,[5] filed Phase II and Phase III Proposed Findings of Fact and Conclusions of Law on July 12, 1991 and Phase II and III Reply Findings on July 22, 1991.

Findings of Fact
MTW Issues 1-3

7. MTW has manifested procedural recalcitrance from the outset. The case was designated for hearing on June 11, 1990. *See* 55 F.R. 24927 published June 19, 1990. On July 20, 1990, Willis moved to enlarge the issues against MTW. He asked for a lack-of-candor issue on MTW's hearing publication or the lack thereof, and a related inquiry into MTW's failure to comply with 47 CFR § 73.3594(g)'s publication requirements.

8. MTW never bothered to respond to Willis' request. So, and although publication problems are rarely decisionally significant, the Trial Judge (faced with MTW's silence) added the two issues Willis had requested. *See* FCC 90M-2633 released August 22, 1990. Willis was assigned the burden of proceeding on MTW-1 and MTW-2; the ultimate burden of proof remained on MTW.

9. A short time later, on September 7, 1990, Willis again moved to enlarge the issues against MTW. This time he asked for an abuse of process issue. He claimed: (1) that MTW had improperly circumvented the Commission's *in camera* inspection procedures; (2) that MTW had refused to turn over properly requested documents; and (3) that MTW had improperly redacted information from certain documents in violation of the Prehearing Order discovery instructions (FCC 90M-1713, released June 18, 1990 at para. 11).

10. This time MTW opposed Willis' motion. But the Trial Judge ruled that Willis had pleaded with the required specificity and sufficiency to warrant adding an abuse-of-process (MTW-3). *See* FCC 90M-3270 released October 17, 1990. A hearing on Issues MTW-1 through MTW-3 was scheduled for December 11, 1990. It aborted. *See* FCC 91M-1427 released April 24, 1990, paras. 8-11. So, on March 8, 1991, Willis filed a Motion For Summary Decision on MTW-1 through MTW-3. The Trial Judge granted that motion. *See* FCC 91M-1427 *supra*. Thus, the following intermediate findings are in order.

11. MTW's principals violated 47 CFR § 73.3549(g)'s publication requirements by wholly abdicating the responsibility for publishing the notice of hearing. When that abdication surfaced they then filed a false statement regarding their publication, a statement that they knew was false. Even after the falsity of statement was called to their attention, MTW made no attempt to correct that falsity, and continued to lack candor.

12. So Issues MTW-1 and MTW-2 are resolved adversely to MTW. Moreover, their misconduct, their misrepresentations and their lack-of-candor warrant the ultimate finding that MTW Communications is not of fit character to be a Commission licensee.

13. Under MTW-3 (abuse of process) it developed that MTW had failed to produce numerous pertinent documents that they had previously agreed should be produced. In fact, it further developed that MTW's principals didn't produce the documents because they didn't even know what documents their counsel had agreed to produce.

14. Moreover, when Finley Willis' counsel tried to obtain pertinent and relevant documents during the August 1990 depositions, MTW's counsel belatedly, inappropriately, and improperly asserted an attorney-client privilege. So, even *assuming* that MTW were basically qualified under MTW-1 and MTW-2, they will be independently disqualified under MTW-3.

ABC-1 and ABC-2

15. Under ABC-1 we must determine whether Anderson Broadcasting Company was and is financially qualified to be a Commission licensee; and under ABC-2, we must find out whether Anderson Broadcasting Company lacked candor with or misrepresented to the Commission when they certified their financial qualifications in BPH-880504MV.

16. ABC is a limited partnership with one general partner and eight limited partners. The following chart gives the names of the partner, his or her equity interest, and the total committed investment at the time of certification:

CHART

Name	Type of Partner	Equity %	Committed Investment
Cheri Murphy	General Partner	21%	$52,000
James D. Morgan	Limited Partner	15.8%	$39,500
Robert E. Cox	Limited Partner	15.8%	$39,500
William D. Disponnet	Limited Partner	15.8%	$39,500
James M. Stevens	Limited Partner	15.8%	$39,500
John V. Boardman	Limited Partner	3.95%	$ 9,875
Sam T. Adams	Limited Partner	3.95%	$ 9,875
Ellis L. Hefner	Limited Partner	3.95%	$ 9,875
Thomas W. Miller	Limited Partner	3.95%	$ 9,875

17. When ABC filed their application on May 4, 1988, Cheri Murphy ABC's General Partner, certified that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue." At that time ABC was relying on the personal resources of its general and limited partners (Tr. 964-965, 1181).

18. Ms. Murphy so certified after she met with ABC's communications counsel to discuss the application, and they'd gone over each question in the application (Willis/ABC Joint Stipulation No. 1; Tr. 1147-1148). However, she isn't certain if she saw the instructions to the Commission's Form 301 at that time; and she has never heard the term "sufficient net liquid assets on hand" or the term "committed sources of funds." (Tr. 1149-1150).

19. Cheri Murphy didn't have $52,000 in cash or net liquid assets (Finding 16 *supra*.) on the day she certified. She says she had $5,000 in cash at that time (Tr. 1109, 1150-1151, ABC Ex. 7, p. 2). She maintains a personal checking account at Anderson National Bank (*infra*.).

That account has been overdrawn several times over the years. For example, on May 20, 1988 (16 days after she affirmatively certified), Ms. Murphy's personal account showed a negative balance of $74.72 (Tr. 1172; Willis Ex. 23); as of October 20, 1988, she had a negative balance of $10.63; and as of April 21, 1989, she had a negative balance of $18.87.

20. Ms. Murphy says she knew from the outset that she would need financial assistance to participate in the ABC venture. Yet, prior to certification she never approached a bank about a loan or a potential loan. However, she did contact her grandfather, John Disponnet to see if he might provide her with some assistance. She first contacted him on April 30, 1988 (4 days before ABC filed its application). At that time she didn't know the extent of her obligation. She contacted him again 2 days later, May 2, 1988, after she had learned that her obligation would be about $50,000.

21. The first time Cheri Murphy contacted her grandfather (April 30, 1988) she asked him if she " . . . could rely on his financial assistance," and "|h|e told me he would back me in the venture." On the second occasion her grandfather told her he "would commit to |$50,000| and more, if needed." Ms. Murphy says she was "confident that he would have no difficulty in providing me the necessary funds." So at the time she certified, Murphy says " . . . I knew that I could meet my total committed investment (with my grandfather's assistance)."

22. However, it developed during the hearing that John Disponnet never intended to lend or give Ms. Murphy the money (Tr. 1109, 1163). She has no agreement with her grandfather to lend or give her any money. They only discussed whether he would co-sign or guarantee a loan (Tr. 1109, 1162). Additionally, Ms. Murphy never had an arrangement with either the limited partnership or any of the eight limited partners to lend her the money she would need (Tr. 1151).

23. It wasn't until after ABC had filed its application and she had certified ABC's financial qualifications that Cheri Murphy first contacted a bank about a loan to meet her $52,000 personal commitment. On May 5, 1988, she approached the Harrodsburg First Federal Savings and Loan, and obtained a small loan against an inheritance (Tr. 1164, 1166; Willis Ex. 20). She did so so she could have the funds for her initial capital contribution. The inheritance is insufficient to cover Ms. Murphy's full obligation.

24. In June, 1990, with another capital call imminent, Ms. Murphy approached the Anderson National bank about a loan (Tr. 1166-1167). With James Stevens, an ABC limited partner, acting as the loan officer (*See* Finding 16 *supra*.), she obtained a $6,300 loan based on John Disponnet's guarantee (Tr. 1130; 1166-1167; Willis Ex. 21).

25. On October 20, 1990, and to meet a third capital call, Ms. Murphy obtained a third loan, again from the Anderson National Bank. James Stevens again acted as loan officer, and her grandfather, John Disponnet again guaranteed the loan (Tr. 1130, 1169, 1171; Willis Ex. 22).

26. At the time the initial hearing was held (on October 9-11, 1990), Ms. Murphy had no agreement with, or indication from the Anderson National Bank that they would continue to lend her funds for this venture (Tr. 1001). She said that she didn't doubt that such a future loan would be forthcoming, but she knows the difference between having no doubt about a future loan and a bank commitment for such a loan (Tr. 1168-1169). On October 9-11, 1990, Ms. Murphy had no other loan source, and hadn't thought about, or looked into the possibility of obtaining such loans.

27. The first indication that Anderson Bank would lend Ms. Murphy the funds she needed appeared in a November 16, 1990 declaration that James Stevens has submitted. There Stevens indicates that the Anderson National Bank will lend Cheri Murphy " . . . at least $50,000 in addition to her present loan, provided of course that such would be guaranteed by John H. Disponnet."

28. Turning to the committed personal resources of ABC's eight limited partners (see Findings 16-17 *supra*.),[6] and at the time she certified, Cheri Murphy had never seen any of the limited partners' balance sheets or financial statements; she hadn't discussed with any of the eight the manner in which they intended to meet their respective financial commitments; and she had never even asked to see the financial statements of her limited partners. She says she didn't ask for any financial statements because she didn't doubt their financial ability, and so there was no reasons to ask for them.

29. As it turned out, James Stevens (Findings 24-25 *supra*.), did not have $39,500 in net liquid assets on the day Ms. Murphy certified. Moreover, John V. Boardman, another ABC limited partner, knew of Stevens' deficiency. Yet, at an organization meeting held on May 3, 1988, he never told Ms. Murphy about the deficiency and she never asked. To the contrary, at the meeting John Boardman purportedly assured Ms. Murphy that all of the limited partners (including Stevens) had the financial wherewithal to meet their respective financial obligations to ABC.

30. Based on the foregoing basic findings (Findings 15-29 *supra*.), certain intermediate observations are appropriate. When ABC filed their application on May 4, 1988, Cheri Murphy swore that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue."

31. But she had absolutely no factual basis for so representing. She knew that she and her eight limited partners were each relying on their own personal resources to meet their financial commitment. She also knew that she didn't have the funds to meet her $52,000 commitment, and she knew (on May 4, 1988) that she had made no tangible effort to reasonably assure even herself (let alone the Commission) that she could obtain such funds.

32. At the time she certified the most she could say was that having talked to her grandfather, John Disponnet, she was "confident that he would have no difficulty in providing me the necessary funds." However, John Disponnet never intended to lend or give Ms. Murphy the money. He only agreed to guarantee a loan that she obtained.

33. When, on May 4, 1988, Cheri Murphy certified that each of ABC's eight limited partners had the personal resources to meet their investment commitment, she did so without any tangible factual support whatsoever. She had never seen any of the limited partner's balance sheets or financial statements. She'd never even asked to see them. She hadn't even discussed with *any* of the eight limited partners just how they intended to meet their financial commitments.

34. In fact when ABC limited partner, Thomas Miller, a Lexington attorney called her and told her that he was drawing up a limited partnership agreement it was the first time she spoke to him. She did not know Miller when he called her (Tr. 920, 923).

35. Similarly, when limited partner John Boardman called Cheri Murphy on the night of May 2, 1988, it was the first time she had ever spoken to him. She then met Boardman in Miller's office on Tuesday, May 3, 1988 - the day before the application was filed.

36. Limited Partner, James Stevens' first contact with Cheri Murphy was as a result of her being an Anderson National Bank customer. As late as May 1988, that's all he knew about her. Limited Partner Sam Adams never met Ms. Murphy or spoke to her on the telephone until the time depositions were taken in this case. Robert Cox didn't know Ms. Murphy when she was brought into the partnership. Ellis Hefner (para. 16 *supra.*) never met her until a year after the parties had entered into the partnership agreement (Tr. 787, 789, 804, 897, 927, 934).

37. William D. Disponnet (para. 16 *supra.*) is Ms. Murphy's great uncle. But she has had no business dealings with him before this application. James D. Morgan is Ms. Murphy's cousin. But she didn't discuss this venture with Mr. Morgan until after she filed ABC's application (Tr. 937, 946-947).

38. When Cheri Murphy's lack of familiarity with her eight limited partners is combined with her not seeing their balance sheets or financial statements the preliminary conclusion is inescapable: Cheri Murphy couldn't have and shouldn't have certified that "sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue." She simply didn't have the basic facts that would permit her to so certify, and she was well aware she didn't have such facts.

39. All in all, the preliminary conclusion under Issue ABC-1 is that Anderson Broadcasting Company has not shown that on May 4, 1988, sufficient funds were available from committed sources to construct and operate the requested facilities for three months without revenue. Nor were they able to show that there were sufficient net liquid assets on hand. ABC was therefore not financially qualified on May 4, 1988 when they filed BPH-880504MV.[7]

40. Moreover, under Issue ABC-2, Cheri Murphy misrepresented and lacked candor when she represented that sufficient funds were available from committed sources. She knew full well she didn't have the funds to meet her $52,000 commitment, and she had no first hand knowledge that any of her eight limited partners could meet their commitment. In fact, she didn't even know most of them. So Issue ABC-2 must also be decided adversely to Anderson Broadcasting Company.

The Standard Comparative Issue: HDO-1
Description of the Applicants

41. *Finley Willis Jr.*, an individual applicant, is the sole proprietor of BPH-880503MA.

42. *MTW Communications (MTW)*, a general partnership, has three partners: David Melloan, Roy Toney, and Carol Workman. Each has a 33 1/3% ownership in the partnership. They entered into their general partnership on April 30, 1988, and filed their application (BPH-880504MH) four days later.

43. *Anderson Broadcasting Company (ABC)* is a limited partnership made up of one general partner, Cheri Murphy, and eight limited partners. The partnership structure is delineated at Finding 16 *supra.* and need not be repeated here.

44. As previously noted (Fn. 6 *supra.*), all of the limited partners, except for James D. Morgan, are associated with each other through the Anderson National Bank in Lawrenceburg, Kentucky. John V. Boardman is a member of the board and officer of Progressive BancShares. Progressive BancShares owns the Anderson National Bank. Boardman is also an officer and member of Anderson's Board.

45. Robert Cox and William Disponnet are both members of Anderson's Board. James M. Stevens is President of the Anderson Bank and a board member. Sam Adams, an officer at another subsidiary bank, is a member of Progressive's Board. Ellis Hefner is on the boards of both Anderson and Progressive, and Thomas Miller is a Progressive Board member (Tr. 637-639).

Diversification of Mass Media

46. Other than FM application for Lawrenceburg, *Finley Willis* has no ownership interest or positional interest in any medium of mass communication, including any broadcast radio, or television station, cable teievision system or newspaper. Neither MTW nor any of its principals has any media interests. Neither ABC, or Ms. Murphy or any ABC limited partner has or has had any ownership interest in any broadcast station or broadcast application, or any other media of mass communications.

Best Practicable Service

47. *Comparative Coverage.* No comparative coverage advantage accrues to any of the three applicants. Each disclaims any comparative advantage in the areas and populations covered, and in the number of services available within its one mV/m contour. *See* Finding 3 *supra.*

48. *Integration of Ownership With Management: An Overview.* All three applicants seek 100% quantitative integration. Willis' claim is based on his sole proprietorship. MTW contends that all three of its general partners will be integrated (see Finding 42 *supra.*). Mrs. Workman intends to be the full-time Station Manager; Mr. Melloan proposes to be the station's full-time Business Manager; and Mr. Toney would be the station's full-time Technical Director/Sales Manager. ABC proposes to integrate their sole general partner, Cheri Murphy as the full-time General Manager.

49. *Finley Willis.* As sole proprietor of his proposed station Finley Willis intends to be its full-time General Manager. In that capacity, he will personally oversee all areas of the station's operation, including business, programming, news, and public affairs.

50. Finley Willis was born on September 1, 1944. He currently resides at 1324 Drydock Road, Lawrenceburg, Kentucky. He has resided there since January, 1988. Prior to that time, except for a stint in the United States Army he lived in Frankfort, Kentucky from 1967 until January

1988. Not only Lawrenceburg, but the entire community of Frankfort is within the 60 dBu contour of Mr. Willis' proposed station.

51. Finley Willis has a degree in Mass Media/English from Western Kentucky, Bowling Green, Kentucky. He obtained that degree in 1967. While studying at Western Kentucky, Willis was employed by the local newspaper for 1 1/2 years. Additionally, from 1965-1967, Willis worked for WKCT(AM), Bowling Green. He was responsible for night news coverage.

52. From January 1967 to October 1968, Willis worked as a Senior Publicity Specialist for the Kentucky Department of Fish and Wildlife, Frankfort, Kentucky. During his Army stint, he was the Public Information Officer at Letterman General Hospital, San Francisco, California. After he was discharged he returned to his duties as Senior Publicity Specialist at the Kentucky Department of Fish and Wildlife. He held that position until December, 1972. For the past 2 1/2 years Willis has been an associate member of the Kentucky Broadcasters Associations.

53. In 1972 Willis became majority owner and general manager of Capital Camera, Inc. (CCI). CCI is a travel and photographic store with retail outlets in Frankfort and Lexington, Kentucky. However, he has committed himself to reducing or eliminating his current travel and photographic duties if his application is granted. Willis is pledged to devote his full-time and attention to the operation of the proposed station. So he will either turn over his retail responsibilities to other corporate officers or managers, or if that doesn't work out he will sell the businesses.

54. Finley Willis has been civically active within the service areas of the proposed station. Since 1975 he has been a member of the Frankfort-Franklin County Chamber of Commerce. He belonged to the Frankfort Rotary Club from 1986 until January, 1988, and to the Frankfort Jaycees from 1973-1978. Willis is a member of the Lawrenceburg Rotary Club, and since 1990, has been on the Board of Directors.

55. Finley Willis is a white, non-Hispanic male. So he is not entitled to any minority or female enhancements.

56. *MTW Communications*. Before examining each of MTW's three quantitative integration claims, it must be found that the *bona fides* of MTW's ownership structure is highly suspect. MTW's opponents have demonstrated that MTW general partner, Carol Workman (a female, and 33 1/3% general partner) is merely a front for her husband, Max Workman, who ostensibly is not involved in MTW.

57. David Melloan (see Finding 42 *supra*.) was the first MTW partner to learn about the Lawrenceburg allotment. He read about its availability from a newspaper article he read in late April, 1988. Initially Melloan went to Max Workman to talk about possibly applying for the Lawrenceburg FM station. He went to Max Workman because they had previously discussed entering into business ventures together (Tr. 282-283, 294).

58. Later David Melloan and Max Workman called the Washington Office of Congressman Larry Hopkins. They asked if someone there would contact the FCC and have an application forwarded to them. In due course they drove to Lexington to pick up the application. They reviewed the application form, realized that they didn't have the expertise, and would need assistance (Tr. 297-298).

59. Next, Messrs. Melloan and Workman placed phone calls to a Steve Wilburn. Wilburn, who had once applied for his own station, directed them to the individual who had prepared his application, Mr. Ken Russell at Media Properties. Having made these phone calls David Melloan decided he wanted to proceed with an application, but he knew he couldn't carry the financial burden alone. So he and Max Workman discussed joining together (Tr. 283, 285, 287).

60. It was at that point that Max Workman told Melloan about the FCC's policy of giving credit to minorities. They discussed how to "set up" applications. Workman told Melloan that he'd discovered this information by reading an article in the Wall Street Journal. They discussed how they could put together an application that would " . . . satisfy some of those credits," an application that would " . . . put our best foot forward . . . " (Tr. 286, 292, 311).

61. Shortly thereafter Max Workman talked to Roy Toney (Finding 42 *supra*.) about becoming involved in the station. Toney is an African American. Subsequently, in late April 1988, both Workman and Melloan met with Mr. Toney, and pointed out to him that if he (Toney) would join the application, the FCC would give the application credit because he is an African American (Tr. 292-293, 295-296). At that point in time, it was clear that the decision makers were Max Workman and David Melloan.

62. Just before the application was filed, Messrs. Melloan and Workman reached a second decision. They decided that Max Workman would not become a partner because from an FCC stand point it would be better for his wife, Carol Workman (para. 42 *supra*.) and Mr. Toney to be part of the application. However, Max Workman continued to attend most of the meetings the partners held before the application was filed (Tr. 292, 294, 307-308).

63. Max Workman assumed responsibility for the partnership's budget and equipment list. He called a friend, Ron Gentry who owned a radio station in Mayfield, Kentucky and ask him about a budget and equipment list for the proposed station. Gentry prepared and sent Mr. Workman a substantially complete budget and equipment list. These were the documents that MTW used to fill out its application. Carol Workman didn't find out until after depositions were taken that MTW proposed auxiliary generators.

64. It was Max Workman, Roy Toney, and David Melloan who searched for MTW's transmitter site. Mr. Workman contacted the realtor about obtaining a site, and went with Melloan to talk to John Littlenhouse (the transmitter site owner) about the transmitter site.

65. MTW obtained a loan commitment letter from the Lawrenceburg National Bank. In connection with that letter David Melloan submitted to the bank the budget and equipment list that Max Workman had obtained. Carol Workman wasn't even aware that this additional information had been submitted to the bank until after the depositions in this case had been taken.

66. Mrs. Workman also appears either uninformed or confused about other partnership plans. For example, MTW represents that it will have five full-time and two part-time employees. David Melloan says that three of the

five full time employees will be the MTW general partners. Mrs. Workman says that MTW's representation does not include the partners (Tr. 234, 243).

67. MTW claims 100% quantitative integration. They say they will integrate all three of their 33 1/3% general partners into the proposed stations day-to-day management. First, they intend to integrate Carol Workman (33 1/3% general partner) on a full-time basis (not less than 40 hours a week) as station manager. In that capacity she will be in charge of programming, and employee relations.

68. Mrs. Workman was born in 1961. She lives at 1035 Woodspoint Road, Lawrenceburg, Kentucky. Her residence is within MTW's proposed contour, about a mile and a half outside Lawrenceburg's city limits. She plans to maintain this residence. She has resided in Lawrenceburg for three years.

69. Mrs. Workman has Bachelor of Science and a Masters of Arts degree from Murray State University in Murray, Kentucky. She has also completed the educational experience required by the Murray Calloway Hospital for the American Dietic Association in Murray, Kentucky.

70. She has previously been employed as School Food Service Director of the Mayfield, Kentucky schools. Later she became a partner in Richwork Associates, a food service/nutrition consulting business located in Lawrenceburg. She is currently the Consumer Representative for the Kentucky Beef Cattle Association in Lexington, Kentucky. She will terminate this employment before MTW's station goes on the air.

71. Although she has no broadcast experience, Mrs. Workman has been civically active. From 1988-1989 she was Chairman Elect of the Kentucky Nutrition Council and became Chairman 1989-1990. In 1988-89 she was active in the Heart at Work Program, and is presently co-chairman of the Greater Lexington Area American Heart Association Food Festival. She was a member of the Bluegrass District Dietic Association in 1990, and Chairman of the Community Nutrition Committee, 1989-1990. As a member of the Anderson County Public Library Committee, she distributed information during National Nutritional month.

72. Mrs. Workman is a member of the Lawrenceburg/Anderson County Chapter of Beta Sigma Phi Service Fraternity, and its Service Committee co-chairman and corresponding secretary in 1989-1990.

73. Carol Workman claims the comparative enhancements due a white, non-Hispanic female.

74. MTW intends to integrate 33 1/3% general partner David Melloan into the station's day-to-day operation. Melloan will devote full-time (not less than 40 hours a week) to being the station's Business Manager. In that capacity he will be in charge of the office, the station's finances, billings and collections, and keep the partnership's books. He also proposes to participate in employee hiring and firing, policy making and implementation, and community relations.

75. David Melloan was born in 1941. He has lived at 1033 Greenbriar Road, Lawrenceburg, Kentucky for the past ten years. His residence is about 4000 feet from the Lawrenceburg city limits, within MTW's proposed contour. Before that he resided for five years within Lawrenceburg's city limits.

76. Melloan doesn't intend to supervise any employees in his position as Business Manager (Tr. 342). Instead he sees himself engaging in community relations, selling ads and performing other non-management functions not listed in his integration statement (Tr. 352-353). He believes that the three MTW partners are not co-equals at the station (Tr. 335).

77. Melloan has a B.S. degree from Campbellsville College in Campbellsville, Kentucky; he has an M.A. degree from Georgetown College in Georgetown, Kentucky; and he has completed thirty hours of post masters studies at Eastern Kentucky University in Richmond, Kentucky.

78. An educator, Melloan was (for many years) the Principal of E. F. Ward School in Lawrenceburg. He is presently the Supervisor of Instruction for the Anderson County Schools, the county where Lawrenceburg is located. He will retire from his position with the Anderson County Schools at least 30 days before MTW's station goes on the air.

79. David Melloan has no broadcast experience, but he has been civically active within MTW's proposed coverage contour. He has been a volunteer for the Anderson County Cancer Society for the last four years; a member of the United Way Allocation Committee for Anderson County for the past three years; and a member of the Board of Directors for the Anderson County Red Cross for the past nine years.

80. Melloan has also been a member of the Anderson County Chamber of Commerce for the past 12 years. Within that organization he served on the Local Government Committee from 1979-1981, the Annual Christmas Parade Committee from 1981-1987, and the Education Committee from 1985-1986.

81. As noted (Findings 76 *supra.*) MTW's opponents have demonstrated that Melloan has no intention of meeting his integration commitment. According to that commitment and the MTW partnership agreement, Melloan is and will be the Business Manager of the partnership and station. But he's never acted in that capacity. Carol Workman maintains the partnership's books and records, and writes the checks drawn on the MTW account. At the time he was deposed Melloan hadn't even seen any of the checks drawn on MTW's account. Nor had he gone through any of MTW's bank statements. In fact Melloan describes his responsibilities up to the time of depositions as "leg work" (Tr. 338-341).

82. David Melloan, being a White, Non-Hispanic male, can claim no qualitative integration enhancement.

83. Finally, MTW says they will integrate 33 1/3% general partner, Roy Toney into their proposed day-to-day operation. Toney will work at least 40 hours a week as Technical Director and Sales Manager. As Technical Director he will make sure the station's equipment is working properly (Tr. 522).

84. However, Toney will not supervise any employees. He describes himself as a "salesperson/engineer." He intends to generate advertising and sell ads to various business concerns. He will be the only sales person. He knows the difference between a sales person and a sales manager, and only if the station grows in the future, will he manage anyone.

85. About his duties as Technical Director, Roy Toney has no engineering degree. He has never worked physically on a transmitter or studio equipment. In fact, he has never worked at a radio station in either a technical

or nontechnical capacity. He wasn't involved in the engineering portion of the application. He has never met or talked to Dwight Magnuson, the person who did the engineering for MTW's application.

86. Roy Toney is 46 years old. He lives, and has lived for fourteen years at 1065 Hazel Drive, Lawrenceburg, Kentucky. His residence, within MTW's proposed contour, is about 1 1/4 miles from Lawrenceburg. He intends to maintain this residence if MTW is granted.

87. Mr. Toney holds a B.S. degree from Alcorn University and an M.S. degree from Western Kentucky University. For the past 24 years (since 1966), Toney has been employed by the U.S. Department of Agriculture. He is presently, and for the last six years he has been the District Soil Conservationist. Although he is nine years away from full retirement under the federal pension system (Tr. 488), Toney believes he will be eligible for early retirement in two years (Tr. 496).

88. Exactly what Toney will do to meet his integration pledge is not at all clear. In his Integration and Diversification Statement he said he *will resign* his employment at least 30 days before the station goes on the air. At the hearing he said that under no circumstances will he resign his position as District Soil Conservationist (Tr. 496). But he has also indicated he will take early retirement from his position as District Soil Conservationist. Toney is aware that if he retires earlier than age 55,[8] he will be penalized and his pension reduced significantly. But he hasn't determined how much his pension will be reduced.

89. Roy Toney also owns and works a 12 acre farm about one and a half miles from his residence. He himself bales hay on the farm with only his son's help. He cuts round or square bales of hay three to four times a year. He must also fertilize the property for growing hay. He must also maintain the farm. He fully intends to continue operating the farm if MTW is granted a CP and the station goes on the air.

90. Mr. Toney also owns and runs a lawn service business. He seeds lawns. He started this business just three years ago, and the only person who helps him with his business is his son. The lawn service business presently occupies about 8-10 hours per week of Mr. Toney's time (Tr. 529). The business is growing, and Toney would like to devote extra time to it. The bottom line for Toney is this: if MTW's application is granted, Toney faces an 80-hour work week commitment (Tr. 490-492).

91. Although he has no broadcast experience, Roy Toney has been civically active within MTW's proposed coverage contour. For the past ten years he has been a member of the Lawrenceburg Lions Club; He is presently their First Vice president. He has assisted the Lion's Annual Candy Day, chaired the Christmas Parade Float in 1987-1989, raised funds for the haunted house project, and was Treasurer of charity functions in 1982.

92. For the past eight years Toney has been a member of Anderson County (Lawrenceburg) Extension Council; a member of the Anderson County Red Cross Board of Directors for seven years; a member of the Anderson County Education Advisory Committee for two years; and a member of the Anderson County High School Parent Advisory Group for six years.

93. For the last thirteen years Toney has been a Deacon in the Evergreen Baptist Church in Anderson County, and he has been Sunday School Superintendent the past seven years.

94. Roy Toney claims the comparative enhancements due a Black, non-Hispanic male.

95. Based on the foregoing (Findings 56-94 *supra.)* certain intermediate findings are in order. Carol Workman's integration pledge lacks genuineness. She is a mere front for her husband, Max Workman, who ostensibly is not a part of MTW's proposal. Roy Toney has failed to demonstrate that he has either the time or the technical know-how to carry out his pledge. And David Melloan's integration pledge doesn't bear the slightest resemblance to what he has testified he intends to do. In short, MTW's integration pledge is defective.

96. *Anderson Broadcasting Company Limited.* ABC's 100% quantitative integration centers around the integration pledge of their sole general partner, and 21% equity holder, Cheri Clay Murphy (see Finding 16 *supra.*). They intend to integrate Ms. Murphy full-time (at least 40 hours a week) as general manager of the station. In that capacity, she will hire and fire and supervise all station employees. She will determine the station's format, keep the books and financial records, and otherwise supervise and control the station's overall operation. Purportedly, none of the limited partners (who together hold 79% of the partnership equity, will be integrated into the station's operation.

97. However, the record evidence demonstrates that ABC's limited partners are not sufficiently insulated from partnership control, and that Cheri Murphy is a mere front for a group of bankers interested in securing an advertising outlet of their own. (*See* Fn. 6 *supra*. and Findings 44-45 *supra.*). The limited partnership agreement was prepared by one of the limited partners, Thomas W. Miller, based on data drawn up and supplied by another one of the limited partners, John V. Boardman. The terms of that agreement permit control to flow to the 79% equity holders even though they are ostensibly non-participating limited partners.

98. As background (see Finding 16 *supra.*), four of ABC's limited partners, Messrs. James Morgan, Robert E. Cox, William D. Disponnet, and James M. Stevens live in and around Lawrenceburg (the Lawrenceburg group). The other four, Messrs. John V. Boardman, Sam T. Adams, Ellis L. Hefner, and Thomas W. Miller live in and around Lexington, Kentucky (the Lexington group).

99. John Boardman is the Executive Vice President and Director of Progressive BancShares, Inc. (Progressive). Progressive owns the Anderson National Bank in Lawrenceburg, Ky., and Farmers Bank in Owingsville, Ky. The other three members of the Lexington group; i.e., Miller, Adams and Hefner are Progressive Directors.

100. ABC had its genesis when Progressive tried to buy air time in Lexington for the Anderson National Bank, and was presented with a proposal which was financially prohibitive. Progressive's ad agency, Marshall Golnick, suggested that advertising campaigns could be much more cost effective if Progressive owned their own radio station (Tr. 645-646).

101. At about that time Boardman learned of the Lawrenceburg allocation. He learned about that opportunity from a Hays McMakin. McMakin owns a radio station in Owingville, Kentucky, where one of Progressive's banks is located. The Boardman/McMakin conversation took place about one year before ABC filed its applica-

tion. During that year Boardman recruited fellow Progressive directors, Miller, Adams, and Hefner (the Lexington group) to assist him with his plan.

102. In April 1988, Mr. Boardman met with the Lexington group. They discussed applying for the Lawrenceburg allocation. Their initial and primary concern was to find someone who could and would dedicate their full-time to operating the station (Tr. 649).

103. Initially, Boardman asked Hay McMakin (see Finding 101 *supra.*) if he was interested in actively participating in the radio station. McMakin declined, but later agreed to be a consultant for ABC. In fact, McMakin, along with limited partner, James M. Stevens, selected ABC's proposed transmitter site, delivered the site information to ABC's engineer, and later firmed up the site's availability.

104. The banking group; i.e., the limited partner next contacted Jack Petry, a Lawrenceburg resident, about a full-time job operating the station. This was in April, 1988. Petry had worked in a number of radio stations and had his own production company in Lexington. The group wanted Petry not only because he had expertise, but also because they had none. Petry also turned them down.

105. After Petry declined the group's offer, the group was aware that the May 4, 1988 filing deadline was past approaching, and they were running out of time. The entire project was in jeopardy. It was at that point that limited partner, William Disponnet raised the possibility of Cheri Murphy becoming involved in ABC's application. As previously noted (Finding 37 *supra.*), William Disponnet is Ms. Murphy's great uncle.

106. On April 30, 1988, just four days before the filing deadline, Disponnet called Ms. Murphy. He asked her if she would be interested in operating a radio station. Before William Disponnet called she didn't even know that a radio station was available in Lawrenceburg.[9] In any event she responded favorably to William Disponnet's inquiry.

107. The Lawrenceburg and Lexington groups then approved Ms. Murphy, and William Disponnet called her on May 2, 1988. He told her that they needed to make an application for the station, that she would need to go to Washington to file the application, and that Thomas Miller, a Lexington attorney would be calling her.

108. The same day limited partner Thomas Miller did call her (see Finding 34 *supra.*). He told her he was drawing up a limited partnership agreement, that she was to hold a 21% equity interest in it, and that she had to attend a meeting in his office the next day. She did not know Miller at the time he called. At the time Ms. Murphy did not know what her or anyone else's financial commitment would be.

109. On the evening of May 2, 1988, Cheri Murphy received another phone call. This one was from John Boardman. He called her to tell her what her role in the partnership would be. This was the first time she had spoken to John Boardman.

110. Ms. Murphy attended the meeting in Mr. Miller's office on May 3, 1988. Also present were Miller, Boardman, and McMakin. They discussed construction and operation costs and Murphy and Boardman signed the limited partnership agreement. Ms. Murphy gave no input into ABC's partnership documents, nor did she review the limited partnership agreement with Miller.

111. The following day, May 4, 1988, Cheri Murphy flew to Washington to meet with ABC's communications counsel, Mr. Joyce. Mr. Boardman made the arrangements for her trip. Essentially, Joyce's role was to explain a completed application to Mr. Murphy, and have her appropriately certify and sign it. All the application preparation work had been completed by the limited partners and others.

112. For example, ABC's name had already been decided on when Ms. Murphy was brought into the application. She didn't open the bank account which, pursuant to the partnership agreement must be at the Anderson National Bank (see Findings 44-45 and Footnote 6 *supra.*). The first time she became aware of a bank signature card in her name was when she saw a copy of it during her deposition.

113. ABC used the engineering firm of Larken and Associates, and they had been hired before Ms. Murphy was brought into the partnership. McMakin, Stevens, and William Disponnet secured ABC's tower site before Ms. Murphy became involved in ABC. ABC's limited partnership agreement refers to a letter of credit from the Anderson National Bank. Ms. Murphy did not participate in obtaining that letter of credit. Nor did she see this letter of credit before the application was filed although the letter of credit is addressed to her. Up until the time of her deposition Ms. Murphy didn't even have a copy of the letter of credit.

114. *Since* ABC filed its application ABC's limited partners have been involved in partnership affairs. In July 1990, just before depositions were taken, Thomas Miller had discussions with Washington communications counsel regarding settlement. Mr. Miller has also performed legal services on the partnership's behalf since the application was filed (Tr. 981-984, and MTW Ex. 13).

115. Limited partner Ellis Hefner, an accountant, has acted as the partnership's accountant. Mr. Hefner prepared the 1988 and 1989 state and federal income taxes, and was paid by a check from ABC's account.

116. Limited partner John Boardman has drawn up cost and revenue projections. And he along with Hays McMakin have determined what Cheri Murphy's annual salary should be. In the summer of 1990 when ABC tried to obtain new financing, it was John Boardman, not Cheri Murphy, who carried the workload.

117. Based on the foregoing (Findings 97-116 *supra.*) an intermediate observation is appropriate. Cheri Murphy is not a part of this application. She's a general partner in name only. The power is wielded by the eight limited partner bankers who own 79% of the partnership's equity. The only reasons Cheri Murphy's name appears on the application is because ABC (at the time the application was filed) was running out of time. The experienced broadcasters they had tried to obtain had turned them down. The application filing date was imminent, and the project appeared doomed. So they recruited Cheri Murphy.

118. Cheri Murphy was born in 1963 and except for two years 1967-1969 when she lived in Lexington, Kentucky, she has been a resident of Lawrenceburg. She lives with her mother and brother at 329 Plum Street, Lawrenceburg, Kentucky.

119. Ms. Murphy graduated from Anderson County High School in Lawrenceburg in 1981, and from the University of Kentucky at Lexington in 1985.

120. Cheri Murphy has some limited broadcast experience. From April 1986 to March, 1987, she worked part-time (averaging 10 to 15 hours per week) at station WJMM, Versailles, Kentucky as a Disc Jockey.

121. After she graduated from the University of Kentucky, Ms. Murphy went to work as the assistant timekeeper for the Eastern State Hospital at Lexington, Kentucky. Then, in May 1987, she moved to the Kentucky Department of Social Insurance. She started out processing food stamp applications. Effective September 16, 1990, she was promoted to Jobs Case Manager. She has never supervised any employees.

122. Ms. Murphy has been civically active within ABC's proposed coverage contour. She's been a member of the Lawrenceburg First Baptist Church since October 1973, and has taught Sunday School there for the past three years.

123. Cheri Murphy claims the comparative enhancement due a white, non-Hispanic female.

124. *Auxiliary Power.* All three applicants propose to use auxiliary power.

Conclusions of Law

1. Three mutually-exclusive applicants seek authority to operate on FM station on Channel 271A(102.1 MHz) in Lawrenceburg, Kentucky: Finley Willis, Jr. (Willis), MTW Communications (MTW), and Anderson Broadcasting Company Limited Partnership (ABC).

2. Evidence was adduced on six factual issues. Five of the six are basic qualifying issues. Three of the five are against MTW, and the other two are against ABC. The sixth factual issue is the standard comparative issue.

3. Only basically qualified applicants are entitled to a comparative analysis. *See e.g. Louis Adelman*, 29 FCC 1223, 18 RR 1062 (1960) *affirmed sub. nom. Guinan* v. *Federal Communications Commission*, 297 F. 2d 782, 22 RR 2026 (1961). So before we look at the comparative issue (HDO-1), and the ultimate issue (HDO-2), we must come to grips with the five basic qualifying issues (MTW-1 through MTW-3, and ABC-1 and ABC-2).

4. *MTW-1 and 2 (Publication lack of candor).* Violation of the Commission's hearing publication rules are rarely decisionally significant. But here is one instance where they are. MTW's principals totally failed to meet 47 CFR § 73.3594(g)'s publications requirements. They made no real effort to have the notice of hearing published. They were given additional time and opportunity to so publish, but they still didn't do so. Moreover, when that failure surfaced, they attempted to cover up by filing false statements with the Commission, statements that they knew were false. And when the false statements were called to their attention, they continued to lack candor. This is not conduct befitting a Commission licensee. Such a cavalier regard for the Commission's rules leads to the unavoidable conclusion that MTW Communications lacks the character qualifications to be a Commission licensee.

5. *MTW-3 (Abuse of Process). Assuming* that MTW had complied with the Commission's publication rules in a timely fashion, and had not been less than candid with the Commission, they would still be found basically unqualified. They have overtly abused the Commission processes. During the discovery phase of the hearing they refused to produce documents that they previously agreed they would produce. Moreover, when Willis' counsel tried to obtain pertinent and relevant documents during the August 1990 depositions, MTW's counsel, in direct contravention of the prehearing order, belatedly, inappropriately, and improperly asserted an attorney-client privilege.

6. Such trial tactics foster obscurity, promote concealment and ambush, and hinder efforts to arrive at the truth. In addition, they squander the Commission's judicial system resources and promote delay. If the Commission's trial judges are to get their end of the job done properly, and if the Commission is to foster respect for its processes, then we must clamp down on abuse of process and calloused trial tactics that hinder the smooth progression of the case and promote delay.

7. MTW can and should be held accountable for these offenses that go to the heart of the administrative hearing. They are presumed to know the consequences of their abusive trial tactics. They are unfit to be a Commission licensee.

8. *ABC-1 and ABC-2 (Financial Qualifications and False Financial Certification).* Under ABC-1, ABC must not only show that they are financially qualified now, but that they were financially qualified on May 4, 1988 when they filed BPH-880504MV. *See Aspen FM Inc.*, FCC 90R-37 released May 23, 1990 at paras. 15-17 and *Shawn Phalen*, FCC 90R-64 released July 24, 1990. ABC has proved neither.

9. ABC hasn't shown that on May 4, 1988, they had sufficient net liquid assets on hand or that there were sufficient funds available from committed sources to construct and operate the requested facilities for three months without revenue. In fact, the record shows the converse to be true. General partner, Cheri Murphy, didn't have the funds to meet her $52,000 commitment, and limited partner James Stevens did not have his $39,500 commitment in net liquid assets on the day Ms. Murphy certified.

10. Nor has ABC shown that they are financially qualified now. *Limited partner* John V. Boardman's belated effort to obtain a $250,000 financial commitment letter from the Farmer's Bank in Nicholasville, Kentucky in July, 1990, and the March 25, 1991 demand note from that bank cannot be credited. *See* Footnote 7 *supra*. Thus, ABC hasn't met either prong of ABC-1, and they are not financially qualified to be a Commission licensee.

11. Even *assuming* that ABC had met ABC-1's two-prong test, they would still be denied under ABC-2. It is concluded that they lacked candor with and misrepresented their financial qualification to the Commission when they filed BPH-880504MV.

12. On May 4, 1988, General Partner Cheri Murphy certified that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue." Specifically, at that time ABC was relying on the personal resources of their general and limited partners.

13. When Cheri Murphy so certified she knew that she that she didn't have sufficient funds to meet her $52,000 financial commitment. And she should have known that limited partner James Stevens didn't have the sufficient net liquid assets to meet his $39,500 financial commitment.

14. The further truth is that when Cheri Murphy certified ABC's finances she didn't have the faintest idea of what the personal resources of her eight limited partners were. She didn't know many of them. She had never seen any of their balance sheets or financial statements. And

since she herself had just joined the partnership the day before (May 3, 1988), she hadn't discussed with any of the eight the manner in which they intended to meet their respective financial commitments. Stated another way, having been recruited as ABC's general partner at the eleventh hour, Cheri Murphy didn't have the faintest idea what was going on.

15. Since Cheri Murphy was not in a position to certify ABC's financial qualifications on May 4, 1988, since she didn't have enought information, she should never have so certified. It was improper for her to make representations to the Commission when she had no idea whether those representations were false or true. Since she certified in total ignorance, she must be charged with constructive misrepresentation and lack of candor under ABC-2.

Ultimate Conclusion

16. Since neither MTW, nor ABC are basically qualified to be a Commission licensee, no comparative conclusions are required under the comparative issue.[10] Finley Willis is basically qualified to be a Commission licensee. Since he is, and MTW and ABC aren't, Willis is declared the winner. So, unless an appeal is taken from this Initial Decision or the Commission reviews it on their own motion, MTW Communications' application (BPH-880504MH), and Anderson Broadcasting Company, Limited Partnership's application (BPH-880504MV) ARE DENIED; and Finley Willis, Jr.'s application (BPH-880503MA) IS GRANTED.[11]

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTES

[1] There were numerous enlargement requests filed that covered a considerable time span. In fact the hearings had to be conducted in three phases.

[2] MTW-1 and MTW-2 were added in FCC 90M-2633 released August 22, 1990, and MTW-3 was added in FCC 90M-3270 released October 17, 1990.

[3] Issues ABC-1 and ABC-2 were added in FCC 90M-3975 released December 17, 1990.

[4] The standard comparative issue and the ultimate issue were contained in the original Hearing Designation Order (HDO). *See* 55 F.R. 24927 published June 19, 1990.

[5] MTW apparently fell apart procedurally. *See e.g.* FCC 91M-1427 released April 24, 1991. But, in spite of the obvious lack of prosecution, and pursuant to 47 CFR 1.263(a), the Trial Judge *directed* all three parties to file Phase II Conclusions and Phase III Findings and Conclusions (Tr. 1188-89). Willis and ABC complied with that directive. MTW not only didn't comply, they've never explained why they didn't comply. MTW's counsel's silence has been both mysterious and deafening.

[6] All of the limited partners, except for James D. Morgan, are associated with each other through the Anderson National Bank in Lawrenceburg, Kentucky.

[7] Since ABC has failed to show that they were financially qualified on May 4, 1988 when they filed BPH-880504MV, there is no need to make findings on the $250,000 July, 1990 financial commitment letter from the Farmers Bank in Nicholasville, Kentucky, or the March 25, 1991 demand note from that institution. Those two docments are irrelevant to this case. *See Aspen FM, Inc.*, 6 FCC Rcd 1602 (1991) at 1603; also see Tr. 1066-1067. In any event the general partner, Cheri Murphy was not instrumental in the 1990-1991 financial negotiations. The moving force behind those negotiations was Limited Partner, John V. Boardman (Tr. 631-636).

[8] The record doesn't disclose *why* Toney believes he could become eligible for early retirement.

[9] Up until that time Ms. Murphy hadn't seriously considered owning or operating a radio station. She had never taken any concrete steps toward purchasing or applying for a radio station, and she hadn't even kept in contact with the people she knew in radio (Tr. 921-922).

[10] Note however that comparative *findings* have been made on all three applicants. *See* Findings 41-124 *supra*.. So if an appellate body disagrees with all or part of the basic qualification analyses, all the findings needed to make the required two or three party comparison are present. No remand will be required. Stated another way, findings of fact have been made on *all* issues, and conclusions of law have been made on *all material* issues. *See WFPG, Inc.*, 33 FCC 673 (1962) at para. 13; *Alkima Broadcasting Co.*, 30 FCC 932, 21 RR 732 (1961) at Footnote 2; *Sayger Broadcasting Co.*, 32 FCC 499, 22 RR 1059 (1962) at Footnote 7; 47 CFR 1.267(b) and 5 USC 557(c)(A).

[11] If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, this Initial Decision will become effective 50 days after its public release. *See* 47 CFR 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS,
Complainant,

v. File No. E-90-18

THE SOUTHERN
NEW ENGLAND TELEPHONE
COMPANY,
Defendant.

ORDER

Adopted: January 24, 1992; Released: January 31, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On October 3, 1989, AT&T Communications (AT&T) filed the above-captioned complaint alleging that defendant's rates for 1988 were unjust and unreasonable in violation of 47 U.S.C. § 201(b). AT&T maintained defendants had overstated their interstate revenue requirements. On January 10, 1992, the parties filed a joint motion to dismiss the complaint. They state that all claims in the action have been compromised and settled between the parties.

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WXIA-TV Complaint No. 91070126

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 1992; Released: January 29, 1992

By the Commission: Commissioner Quello not participating.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny Complainants' motion to disqualify Commissioner James H. Quello from participating in the above-captioned complaint proceeding.[1]

II. BACKGROUND

2. Complainants are nine political candidates who ran for office in the state of Georgia in 1986 or 1990.[2] Complainants have filed a formal complaint before the Commission alleging that the licensee of Station WXIA-TV violated the "lowest unit charge" requirement of Section 315(b) of the Communications Act of 1934, as amended, in the 1986 and 1990 Georgia election campaigns. In their complaint, they request that the Commission audit WXIA-TV's records for these years, revoke the license of WXIA-TV, assess forfeitures against WXIA-TV, and order WXIA-TV to refund overcharges to the candidates. The complaint is pending before the Commission.

3. On October 21, 1991, Complainants requested that Commissioner Quello voluntarily withdraw from participation in the complaint proceeding, or, alternatively, that the Commission disqualify him from participation. Complainants asserted that Commissioner Quello had made certain public remarks which indicate bias (or an appearance of bias) against their claim.[3] Specifically, Complainants argued that Commissioner Quello "has already made up his mind on the issues of liability and damages for violations of § 315(b) . . ."[4]

4. In response, Commissioner Quello requested the General Counsel's opinion as to whether he was required to recuse himself from the proceeding. The General Counsel issued a letter stating that, in his view, Commissioner Quello was not required to recuse himself because the Commissioner's remarks merely expressed his view that the Commission, not the courts, should adjudicate complaints alleging violation of the lowest unit charge requirement.[5] Commissioner Quello subsequently issued a separate opinion in which he declined voluntarily to recuse himself from the proceeding.[6] Complainants then renewed their request that Commissioner Quello be disqualified.

III. DISCUSSION

5. The test for disqualification of a Commissioner on the grounds of prejudice or appearance of prejudice in an adjudicatory proceeding is whether "a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 590-591 (D.C. Cir. 1970) (*Cinderella*). Similarly, section 19.735-201a of the Commission's rules requires an employee, *inter alia*, to avoid any action which might result in or create the appearance of losing complete independence or impartiality. 47 C.F.R. § 19.735-201a. As discussed below, we conclude there is no basis for disqualification under the *Cinderella* test. Having made that determination, we also believe there is no violation of the Commission's rules.[7]

6. We believe that a disinterested observer could not conclude that Commissioner Quello has in any way adjudged the facts as well as the law of the pending complaints against WXIA-TV.[8] As a preliminary matter, we note that Commissioner Quello does not mention WXIA-TV or the specific complaints in any of the quoted remarks cited by Complainant. Further, it is apparent from both the speeches and the quotations in *Broadcasting* referred to by the Complainant that the import of Commissioner Quello's remarks was a concern that alleged violations of section 315(b) should be adjudicated by the FCC, not the courts. Read in context, a disinterested observer would thus readily conclude that the specific remarks to which complainants object relate only to the appropriate forum for resolution of the lawsuits pending in court, and not to the merits of particular complaints or the specific complaint against WXIA-TV.[9] Finally, we do not believe a disinterested observer would conclude that Commissioner Quello's statement that "[c]andidates have even challenged license renewals over allegations of lowest unit charge violations" would in any way suggest that he has adjudged the facts as well as the law regarding whether WXIA-TV has violated section 315(b).[10] We do not think a mere reference to non-renewal as a potential sanction is sufficient to cause a disinterested observer to tie Commissioner Quello's remarks to a particular case. Further, even assuming that this remark reflected a preconception as to whether, as a general legal matter, non-renewal is a proper remedy for section 315(b) violations, such a preconception as to the law would not require disqualification.[11]

7. Accordingly, IT IS ORDERED that Complainants' motion for disqualification of Commissioner James H. Quello from participating in this proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Before the Commission are Complainants' Demand for Voluntary Withdrawal or, in the Alternative, Motion to Recuse (Motion), received October 21, 1991, a Memorandum filed by Complainants in support thereof on the same day, and Complainants' Opposition to "Opinion of Commissioner James H. Quello" and Renewal of Complainants' Motion to Recuse (Renewal), dated November 26, 1991.

[2] The Complainants are the following candidates: Roy Barnes, Johnny Isakson, Lauren McDonald, Zell Miller, Andrew Young, Pierre Howard, Warren Evans, Tim Ryles, and Mack Mattingly.

[3] On October 2, 1991, Commissioner Quello spoke before the American Women in Radio and Television, Inc. and the Kentucky Broadcasters Association (October 2 speech). On October 11, 1991, Commissioner Quello spoke before the Minnesota Broadcasters Association (October 11 speech). *Broadcasting* magazine contained two articles in its October 7, 1991 issue, entitled "FCC Moves to Stem Lowest Unit Lawsuits" and "Quello Urges Leniency in Overcharge Cases," which included quotations from Commissioner Quello. Complainants rely on these two speeches and two articles as the basis for their disqualification request.

[4] Memorandum at 3.

[5] *See* Letter of November 7, 1991 from Robert L. Pettit, General Counsel to Commissioner James H. Quello.

[6] Opinion of Commissioner James H. Quello (Opinion), Public Notice No. 20642, released November 14, 1991. The General Counsel's letter is attached as an appendix to Commissioner Quello's Opinion.

[7] If a disinterested observer could not conclude that Commissioner Quello in some way had prejudged the case, then we also believe there would be no appearance of loss of impartiality under our rules. Further, contrary to Complainant's claims, our rules were not intended to impose a requirement of impartiality that is in any way more stringent than that imposed by the courts.

[8] As a point of clarification, we also note that a decisionmaker's preconceptions as to the law, standing alone, do not invalidate agency action or require disqualification. *See* FTC *v. Cement Institute*, 333 U.S. 683, 702-03 (1948); *City of Charlottesville v. FERC*, 774 F.2d 1205, 1212 (D.C. Cir. 1985). It is also noteworthy that even judges are free to decide cases involving policy questions on which they previously have expressed a view. *See Association of National Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1171 n.51 (D.C. Cir. 1979); *see also C & W Fish Co., Inc. v. Fox*, 931 F.2d 1556, 1565 (D.C. Cir. 1991); *In the Matter of a Petition for Investigation of Alleged Violations of the Commission's Rules*, 6 FCC Rcd 4762 (1991).

[9] *See* Memorandum at 2, *quoting* October 2 speech at 3, October 11 speech at 4; Memorandum at 2, *quoting* October 11 speech at 5-6; Memorandum at 3, *quoting Broadcasting* magazine, "FCC Moves to Stem Lowest Unit Lawsuits."

[10] *See* Memorandum at 6, *quoting* October 2 speech at 3, October 11 speech at 4.

[11] *See* cases cited in note 8, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Released: February 3, 1992

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Edward G. Atsinger III, President 8310-SP
Salem Media Corporation C5-163
Radio Station WMCA(AM)
2310 Ponderosa Drive, Suite 29
Camarillo, CA 93010

Dear Mr. Atsinger:

This letter constitutes a Notice of Apparent Liability for a Forfeiture in the amount of twelve thousand five hundred dollars ($12,500) against Salem Media Corporation (Salem), licensee of Station WMCA(AM) in New York, New York. Pursuant to Section 503(b) of the Communications Act of 1934, as amended, you are hereby advised of the following:

The Commission received a letter of complaint dated July 11, 1990, from Ms. Miriam Miller alleging that the weekly program, "Healthline," hosted by Dr. Stuart Berger, was a paid-for program but was not identified as such. On the basis of that correspondence, the Commission sent you a letter of inquiry on April 1, 1991. Salem responded to that letter of inquiry on May 6, 1991, enclosing cassette tapes of portions of ten "Healthline" programs.

Salem states that WMCA(AM) broadcast "Healthline," a two-hour program hosted by Dr. Stuart Berger, every Saturday from 12:00 to 2:00 p.m. since it acquired the station in September 1989, with the exception of preemptions due to football games. It acknowledges that the Commission's sponsorship identification rule (Section 73.1212) was not "strictly" complied with during this program until after May 1, 1991, following receipt of our letter of inquiry. Salem admits that WMCA broadcast no sponsorship identification announcement for the program. The response explains that Dr. Berger purchases the entire block of time from the station for the broadcast of "Healthline," uses it to discuss health issues and promote his medical practice, and also sell time to several other sponsors promoting products. After reviewing the audio tapes of this program, we have determined that sponsorship identification was omitted, and the content of the program alone does not make it clear that "Healthline" is paid for by Dr. Berger. (*See* Section 73.1212(f) of the Commission's Rules.)[1]

Section 317 of the Communications Act of 1934, as amended, states in pertinent part:

> (a)(1) All matter broadcast by any radio station for which money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person . . . .

Additionally, Section 73.1212 of the Commission's Rules states in pertinent part:

> When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied. . . .

In the instant case, WMCA(AM), over an extended period of time, broadcast programs for which the licensee received valuable consideration. It appears, however, that the broadcasts of the programs were not accompanied by the required sponsor identification announcements and it was not clear from the mention of Dr. Berger's name that "Healthline" was sponsored by him. This violation is not diminished by Salem's representations that WMCA(AM) has since taken steps to assure that appropriate sponsorship identification announcements are and will be broadcast on "Healthline." It is well established that a licensee will not be excused from past violations because of subsequent remedial measures. *Cate Communications Corp.*, 60 R.R. 2d 1386, (1986).

The forfeiture amount was reached after careful consideration of the factors set forth in Section 503(b)(2) of the Communications Act. We have also considered the guidelines detailed in our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*. Under these guidelines the base amount for a sponsorship identification violation is $6,250.00. In this case the violation was repeated over an extended period of time; therefore, the forfeiture amount was increased to $12,500.00. No other adjustments appear appropriate. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Salem Media Corporation, licensee of Station WMCA(AM), New York, NY, is hereby advised of its APPARENT LIABILITY for a FORFEITURE in the amount of $12,500.00 for its apparent willful and repeated violation of Sections 317 of the Communications Act of 1934, as amended, and 73.1212 of the Commission's Rules from September 1989 through May 1991, (with the exception of programs preempted by football game broadcasts).

In regard to this forfeiture proceeding, you may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this letter.

This letter was adopted by the Commission on January 17, 1992.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] Advertisements for various products, such as Regina's Royal Jelly Bee Pollen, were aired during the program. The naming of the products in these instances clearly was a sponsorship identification for these products. *See* Section 73.1212(f). They did not, however, in any way make clear the paid-for nature of the surrounding "Healthline" program.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Owen P. Mills & John A. Borsari
d/b/a OCEAN PINES BROADCASTING ASSOCIATES

File No. BPH-870330MP

For Construction Permit
for a New FM Station
Ocean Pines, Maryland
Channel 246A

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 1992; Released: February 3, 1992

By the Commission:

1. The Commission has before it an application for review filed by Ocean Pines Broadcasting Associates ("Pines") on August 10, 1988, seeking review of an action by the Mass Media Bureau ("Bureau") which dismissed the captioned application and designated for comparative hearing ten other mutually exclusive applications for the Ocean Pines allotment. *Stegus Corporation*, 3 FCC Rcd 4641 (1988).

2. Engineering study of Pines' application by the Commission staff revealed an error in one of its crucial engineering parameters. In dismissing Pines' application, the Bureau stated:

> [a discrepancy exists] between the value for the antenna height above average terrain (HAAT) listed in Section V-B, Item 6, of [Pines'] FCC Form 301, and the average of the eight radials listed in Section V-B, Item 15. Specifically, a HAAT value of 102.6 meters is obtained when calculating the HAAT using the eight radials as opposed to the HAAT value of 100 meters listed in Section V-B, Item 6 of [the] application. The effective radiated power (ERP) value of 3.0 kilowatts in combination with the HAAT value of 102.6 meters exceeds the maximum permitted for a Class A facility pursuant to 47 C.F.R. § 73.211. Accordingly, [Pines'] application was inadvertently accepted for filing and pursuant to 47 C.F.R. §§ 73.3564 and 0.283, [Pines'] application will be dismissed herein. *Cf. Kerrville Radio*, 2 FCC Rcd 3441, 3442 (1987).

Stegus, at 4641.

3. In its application for review, Pines first claims that its HAAT was computed accurately utilizing proper Commission methodology. Specifically, Pines argues that it employed computer-generated average terrain elevations and profile graphs, which are permitted by Section 73.312(d), and that it excluded from its HAAT calculations the 45, 90, and 135 degree radials, as required by Section 73.313(d)(2), because they are located entirely over water in the 3 to 16 kilometer range. Thus, Pines claims that by calculating its antenna HAAT using the five radials, its proposed facility was properly calculated as having an HAAT of 100 meters and therefore does not exceed the maximum permitted for a Class A facility. Pines also cites two *Hearing Designation Orders*[1] released on the same day as that for Ocean Pines, in which the Bureau concluded that applicants had improperly computed their HAATs yet were given an opportunity to correct the defect rather than be dismissed. Pines concludes that the Bureau therefore "acted arbitrarily and capriciously in not affording [Pines] the opportunity to file a corrective amendment." Petition, at p. 8.

4. We reject Pines' claim that its antenna HAAT was computed in accordance with Commission procedures. We agree that use of the computer-generated terrain profile data was permissible under Section 73.312(d) of the Rules. However, we believe that its use here caused Pines erroneously to exclude three radials from its HAAT calculations. Exhibit E-3 of Pines' application does appear to indicate that the site elevations of the 45, 90, and 135 degree radials in the pertinent 3 to 16 kilometer segments is zero feet above mean sea level (AMSL).[2] Pines' engineering consultant then apparently assumed that the "sea level" reading along those three radials indicated that the radials extended entirely over sea water and thus excluded them from the HAAT computation. However, examination of the contour and topographic site maps, submitted with Pines' application as Exhibits E-2 and E-5, respectively, indicates that there is in fact land area within the 3 to 16 kilometer range and that the 50 uV/m contour does not encompass United States land area beyond the 16 kilometer portion of the radial. Therefore," that part of the radial extending from the 3 kilometers sector to the outermost portion of land area within the United States covered by the radial" should have been used in computing Pines' HAAT. *See* 47 C.F.R. § 73.313(d)(2)(ii). Pines failed to do so, and thus computed the HAAT averaging five rather than eight radials.[3] The resulting error caused

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[1] *Naguabo Broadcasting Company*, 3 FCC Rcd 4634 (1988)(Naguabo, Puerto Rico), and *Ocean Waves Broadcasting*, 3 FCC Rcd 4637 (1988)(Narragansett Pier, Rhode Island).

[2] Figure 1 of Pines' exhibit shows the radial data in summary form, Figure 2 in tabular form, and Figure 3 in graphic form.

[3] HAAT is determined by subtracting antenna radiation center height above mean sea level (RCAMSL) from the average terrain elevation above mean sea level. The average terrain elevation is computed by adding the average elevation in the 3 to 16 kilometer range along each radial, then dividing by the number of radials used. The sum of average elevation figures submitted in Exhibit E-3, Figure 1 of Pines' application is 34.75 meters (114 feet). When divided by 5 (the number of radials erroneously used by Pines), the average terrain computes to 6.95 meters (22.8 feet) AMSL; when subtracted from the listed RCAMSL of 107 meters (351 feet), the HAAT computes to 100 meters (328 feet). However, when divided by 8 (the number of radials which should have been used), the average elevation computes to 4.34 meters (14.25 feet) AMSL. Thus, when subtracted from the 123 meter RCAMSL, Pines' HAAT is, in fact, 102.6 meters (337 feet), which violates Section 73.211. This same figure, 102.6 meters, is reached by averaging the eight HAAT values listed in Table 1A of Pines' engineering report, its "Tabulation of TV/FM Contour Calculations on Channel 246."

its application to specify facilities greater than the maximum permitted for Class A stations, in violation of 47 C.F.R. § 73.211.

5. Pines cites two contemporaneous *Hearing Designation Orders* in which, it claims, applicants which had erroneously omitted certain radials from their HAAT computations were permitted to amend rather than be dismissed. However, we believe that both the rulings and the circumstances there are clearly distinguishable from those in the instant case. In *Ocean Waves Broadcasting*, 3 FCC Rcd 4637 (1988), the Bureau concluded that some applicants improperly excluded certain radials and others improperly included radials. That case, however, hinged on the interpretation of that portion of Section 73.313(d)(2) of the Rules which provides that applicants must include a radial when the 3 to 16 kilometer portion lies in whole or in part over water if land within the United States boundaries is encompassed within the proposed 50 uV/m contour beyond the 16 kilometers portion of the radial in question. The applicants in the Narragansett Pier proceeding were therefore given the opportunity to amend because the Bureau concluded that "§ 73.313(d)[(2)] is ambiguous as to how to interpret whether the 50 uV/m contour 'encompasses' land area in the United States and, therefore, applicants reading this rule may have failed to come to the correct conclusion." 3 FCC Rcd at 4639. The ambiguity presented by that provision of Section 73.313(d)(2) does not arise under the facts of the instant case because Pines' 50 uV/m contour clearly falls beyond United States land. Thus, because Pines' 50 uV/m contour falls differently than those of the *Ocean Waves* applicants, Pines' reliance upon *Ocean Waves* is misplaced. While the computations in *Ocean Waves* are governed by Section 73.313(d)(2), Pines' are governed by Section 73.313(d)(2)(ii), which is not ambiguous or unclear.

6. In the other case relied upon by Pines, the Naguabo, Puerto Rico proceeding, one applicant failed to include the 135 degree radial in its HAAT calculations. The predicted 50 uV/m contour of the applicant encompassed the American territory of Vieques Island, and thus the radial, though entirely over water, should have been included in the HAAT computation. In that proceeding, however, it was not necessary to conclude that the portion of the rule concerning land encompassment beyond the 16 kilometer distance was unclear, since the Bureau determined that the erroneous HAAT calculation did not result in a proposal which violated our technical acceptance rules.[4] *Naguabo Broadcasting Company*, 3 FCC Rcd at 4635. Here, Pines' application violated Section 73.211 of the Rules as of the close of the amendment as of right period and, therefore, was unacceptable for filing. *See Pike Family Broadcasting*, 6 FCC Rcd 5552 (1991).

7. In sum, Pines has not demonstrated either that the staff erred in returning its application or that it was treated differently from similarly situated applicants.[5] Accordingly, for the reasons set forth above, the application for review filed by Ocean Pines Broadcasting Associates on August 10, 1988 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[4] Class A stations in Puerto Rico may operate with 3 kW ERP and HAAT of up to 335 meters (1100 feet). *See* former 47 C.F.R. § 73.211(b)(3)(ii).

[5] *See generally New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361 (D.C. Cir. 1987) (Commission discretion in appraising factual differences).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Telephone Company — Transmittal No. 430

Revisions to Tariff F.C.C. No. 4

ORDER

Adopted: January 9, 1992; Released: January 10, 1992

By the Chief, Common Carrier Bureau:

1. By Transmittal No. 430, the BellSouth Telephone Companies (BellSouth) seek to establish a new service called Administrative Management Service (AMS). AMS allows customers mechanized access to certain customer service functions related to BellSouth's switched and special access services that are currently provided by contact with BellSouth personnel. Description and Justification (D&J) at 1. AMS offers primary interexchange carrier inquiry and order, billing information, product and service information, trouble report status, access service order status and billing information, and certain AMS administrative reports. It also allows customers to interact with FlexServ Service, which enables customers to reconfigure their special access networks without the assistance of BellSouth personnel. Customers can select all or a combination of these features for use under AMS. *Id.* at 6-7.

2. A customer can select AMS features via a menu on the customer's terminal screen, which is linked to BellSouth processors. *Id.* at 2-3. The user enters information, which is then forwarded to the AMS processor. The processor then forwards the information to the requested customer service information function. In this way, BellSouth states, customers are not directly connected to any function. The sole exception is access to FlexServ, which customers can access directly in a "pass-through" manner using AMS. *Id.*

3. BellSouth shows that AMS will generate net revenues of $35,647 within the first two years of service, although costs will exceed revenues in the first year. It also provides a price ceiling test pursuant to the Commission's local exchange carrier price cap rules. In addition to developing rate elements for user identification, service establishment charges, usage charges, and port access charges, BellSouth creates rate elements for each AMS feature. *Id.* at 9-10. BellSouth estimates that 25 percent of AMS usage will be related to activities associated with the special access price cap basket, and 75 percent of AMS usage will be related to activities associated with the traffic sensitive switched access price cap basket. *Id.* at Appendix A, Workpaper 2.

4. MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate Transmittal 430, asserting that AMS offers access to many features that cross LATA boundaries, including FlexServ. MCI Petition at 2. MCI states it has filed a complaint with the Department of Justice arguing that FlexServ violates the Modified Final Judgment (MFJ).[1] MCI urges the Commission to suspend Transmittal 430 and conduct its own investigation into whether AMS violates the MFJ. *Id.* at 2-3.

5. BellSouth responds that MCI's sole objection, that AMS violates the MFJ, does not establish a basis to suspend or investigate the transmittal. According to BellSouth, it is Commission policy that allegations of MFJ violations are insufficient to suspend or reject a tariff. BellSouth Reply at 2.

6. The Common Carrier Bureau has reviewed BellSouth Transmittal 430 and related pleadings. We conclude that BellSouth's tariff revision presents no question that warrants suspension or investigation at this time.

7. Accordingly, IT IS ORDERED that the petition to suspend and investigate BellSouth Tariff F.C.C. No. 4, Transmittal No. 430, filed by MCI Telecommunications Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

[1] *Citing* United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983); United States v. AT&T, 569 F.Supp. 1057 (D.D.C.), *aff'd sub nom.* California v. United States, 464 U.S. 1013 (1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALLNET COMMUNICATIONS
SERVICES, INC.,
Complainant,

v. File No. E-89-200

WISCONSIN BELL, INC.,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: January 10, 1992; Released: February 3, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On May 16, 1991, the Commission released a Memorandum Opinion and Order[1] granting in part and dismissing in part complaints filed pursuant to Section 208 of the Communications Act (Act)[2] by Allnet Communications Services, Inc. (Allnet) against the National Exchange Carrier Association (NECA) and thirty individual local exchange carriers (LECs). By further order adopted September 20, 1991,[3] the Commission denied requests for reconsideration of its original order filed by Allnet and Wisconsin Bell, Inc. (Wisconsin Bell).

2. On October 21, 1991, Wisconsin Bell filed a petition for further reconsideration of the *Allnet Order*. Allnet opposes the petition for further reconsideration and Wisconsin Bell replied to the Opposition. For the reasons stated below, we dismiss Wisconsin Bell's petition.

II. BACKGROUND

3. Allnet's complaints were based upon two Commission orders in CC Docket No. 88-1 in which the Commission disallowed certain projected revenue requirements associated with the LECs' 1988 access tariff filings.[4] In its complaints, Allnet sought to recover from the defendants its prorated share of the unlawful disallowed amounts. In that order, however, the Commission had emphasized that the defendants would be given an opportunity to disclaim liability for refunds by showing that revenue requirement overstatements identified by the Commission in the CC Docket 88-1 proceeding were offset by understatements in other related expense categories, or that their earnings for the affected interstate access service category were below the Commission's authorized level for the relevant 1988 time period.

4. In the *Allnet Order*, the Commission found that a number of the defendant LECs successfully rebutted Allnet's claims by submitting evidence of offsets in other expense categories. The Commission also found, however, that since Ameritech, on behalf of Wisconsin Bell, had presented as evidence only overall corporate rather than individual access category earnings, it had failed to refute Allnet's claims of overearnings and was thus liable for refunds of a portion of the disallowed amounts to Allnet.[5] In its request for reconsideration, Wisconsin Bell argued that it was not aware of the Commission's refund standards when it made its original evidentiary submission, and claimed that its actual earnings in the relevant access category were well below the authorized level. In the *Reconsideration Order*, the Commission agreed with Allnet's contention that the earnings figures submitted by Wisconsin Bell were not properly targeted to the correct time period (calendar year 1988). Therefore, the Commission did not reach the question of whether Ameritech, acting on behalf of Wisconsin Bell, should have been aware of the Commission's refund standards during the time of the original complaint proceedings.

III. WISCONSIN BELL'S PETITION

5. Wisconsin Bell has now submitted a statement, in the form of an affidavit of its Director-Earnings Management, which it claims shows that its earnings level for the relevant 1988 time period was 9.79% for the access category at issue, well below the Commission's prescribed level. Wisconsin Bell states that since it was not previously aware that 1988 was the relevant time period of Allnet's complaint, and that since the Commission had failed to make this clear in the *Allnet Order*, the proffered data should be accepted as evidence of non-liability for refunds. Allnet, in its opposition, claims that Wisconsin Bell's affidavit should not be allowed in the record since it does not constitute a new fact under Section 1.106 of the Commission's rules, and that Wisconsin Bell has not justified why the affidavit was not presented earlier. Allnet further claims that, if Wisconsin Bell's new submission is considered by the Commission, Allnet should be given the opportunity to conduct discovery to challenge the accuracy of the earnings data presented. In this regard, Allnet argues, *inter alia*, that the affidavit is not properly executed since it is not signed by an officer of Wisconsin Bell.

IV. DISCUSSION

6. We have reviewed Wisconsin Bell's petition for further reconsideration, and find that the request is inconsistent with the rule prohibiting reconsideration of a Commission order where reconsideration had previously

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[1] 16 FCC Rcd 2608 (1991) (*Allnet Order*).
[2] 47 U.S.C. § 208 (1988).
[3] 6 FCC Rcd 5663 (1991) (*Reconsideration Order*).
[4] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 4 FCC Rcd 4115 (1988), *recon.*, 4 FCC Rcd 3965 (1989), *further recon.*, 4 FCC Rcd 7906 (1989), *appeal pending sub nom.* Southern Bell Telephone and Telegraph Co. v. FCC, No. 89-1081 (D.C. Cir. filed Feb. 2, 1989).
[5] *Allnet Order* at Appendix.

been denied.[6] Wisconsin Bell has provided no new evidence which was not available at the time of the original complaint proceeding, nor has it shown that any changed circumstances or conditions warrant the requested relief.[7] Even granting Wisconsin Bell's repeated argument that it did not become aware of the Commission's standards for determining liability for refunds until the Commission issued its decision in *MCI Telecommunications Corporation v. Pacific Northwest Bell Telephone Company, et al.*,[8] there still remained adequate time for Wisconsin Bell, or Ameritech acting on its behalf, to endeavor to supplement the record in the Allnet complaint proceedings. We are not aware of any such attempt having been made.

V. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated in Section 1.106(k)(3) of the Commission's rules, 47 C.F.R. §1.106(k)(3), that the Petition for Further Reconsideration filed by Wisconsin Bell, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

[6] Section 1.106(k)(3) of the Commission's Rules, 47 C.F.R. § 1.106-(k)(3), provides in pertinent part that "[a] petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious."

[7] This ruling, however, does not preclude Wisconsin Bell from submitting the subject affidavit for consideration in the damages phase of this proceeding.

[8] 5 FCC Rcd 216 (1990), *recon. denied*, 5 FCC Rcd 3464 (1990), *appeal dismissed sub nom.* Mountain States Tel. & Tel. Co. *et al.* v. FCC, Case No. 90-9510 *et al.* (10th Cir. Dec. 13, 1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-239

In the Matter of

Amendment of Section 73.202(b), RM-7769
Table of Allotments,
FM Broadcast Stations.
(Antigo, Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 23, 1992; Released: February 4, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 4925 (1991), proposing the allotment of Channel 291C3[1] to Antigo, Wisconsin, as that community's second FM broadcast service. The *Notice* was issued in response to a petition filed by Nicolet Broadcasting, Inc. ("petitioner"). Petitioner filed comments reaffirming its interest in the allotment of Channel 291C3 at Antigo. Thorp Broadcasting filed a counterproposal, which has not been accepted.[2]

2. We believe the public interest would be served by allotting Channel 291C3 to Antigo, Wisconsin, in order to provide the community with a second broadcast service. As indicated in the *Notice*, Channel 291C3 can be allotted to Antigo consistent with the Commission's spacing requirements without a site restriction.[3] Since Antigo is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 20, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Antigo, Wisconsin	287C1, 291C3

4. The window period for filing applications will open on **March 23, 1992,** and close on **April 22, 1992.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Petitioner originally requested the allotment of Channel 242C3 to Antigo. However, to avoid a short spacing to Channel 242A, Station WEZR, Brillion, Wisconsin, we proposed the allotment of Channel 291C3. The construction permit for Station WEZR, Brillion, was amended to specify operation on Channel 298A in lieu of Channel 242A, effective July 1, 1991. *See* 6 FCC Rcd 2624 (1991). A *Notice* was adopted on July 8, 1991, proposing the substitution of Channel 298C3 for Channel 298A at Brillion and modification of its construction permit accordingly.

[2] The counterproposal filed by Thorp Broadcasting has not been accepted for consideration as it did not contain the required certificate of service or any indication Nicolet Broadcasting was served with a copy of the counterproposal. *See* paragraph 4 of the *Appendix* to the *Notice* and Sections 1.420(a), (b) and (c) of the Commission's Rules. In addition, the counterproposal was unsigned, in violation of Section 1.52 of our Rules.

[3] The coordinates for Channel 291C3 are 45-08-54 and 89-09-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-14

In the Matter of

Amendment of Section 73.202(b), RM-7884
Table of Allotments,
FM Broadcast Stations.
(Ashland, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 23, 1992; Released: February 4, 1992

Comment Date: March 27, 1992
Reply Comment Date: April 13, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by the Phoenix Group ("petitioner") requesting the allotment of Channel 227C1 to Ashland, Wisconsin, as that community's second FM broadcast service. Petitioner submitted information in support of the proposal and stated its intention to file an application if the channel is allotted to Ashland.

2. We believe petitioner's proposal warrants consideration. Channel 227C1 can be allotted to Ashland, Wisconsin, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 8.5 kilometers (5.3 miles) northwest of the community.[1] The site restriction will prevent a short spacing to Station WLDY-FM, Channel 226A, Ladysmith, Wisconsin. Since Ashland is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment.

3. We believe the public interest would be served by proposing the allocation of Channel 227C1 to Ashland, Wisconsin, since it could provide the community with its second FM broadcast service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ashland, Wisconsin	244C2	227C1, 244C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 27, 1992,** and reply comments on or before **April 13, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Steven T. Moravec
Phoenix Media Group
1407 Sumner Street, Suite 200
St. Paul, Minnesota 55116

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 227C1 at Ashland are 46-39-30 and 90-56-00.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-62

In the Matter of

Amendment of Section 73.202(b), RM-6522
Table of Allotments,
FM Broadcast Stations.
(Quincy, Shingle Springs,
and Sutter Creek, California)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 24, 1992; Released: February 4, 1992

By the Chief, Policy and Rules Division:

1. The Commission has before it petitions for reconsideration of the *Report and Order* in this proceeding, 4 FCC Rcd 8482 (1989), filed by Affinity Communications, Inc. ("Affinity"), licensee of Station KTMX(FM), Channel 298B, Colusa, California, Valley Broadcasters, Inc. ("Valley"), licensee of Station KSTN-FM, Channel 297B, Stockton, California, and Hillcrest Motor Company ("Hillcrest"), licensee of Station KXOA-FM, Channel 300B, Sacramento, California.[1] The *Report and Order* substituted Channel 270B1 for Channel 271A at Shingle Springs, California, Channel 271C2 for Channel 270C2 at Quincy, California, and Channel 298A for Channel 269A at Sutter Creek, California. Petitioners seek reconsideration of only the last substitution, that of Channel 298A for Channel 269A at Sutter Creek. Emerald Communications Corporation ("Emerald"), licensee of Station KTHO(FM), Channel 275C2, South Lake Tahoe, California, filed an opposition to the petitions for reconsideration, to which all three petitioners filed replies, and Valley filed supplemental reply comments.[2] For the reasons discussed below, we herein deny all three petitions for reconsideration.

BACKGROUND

2. This case began on September 16, 1988, when Olympic Broadcasters, Inc., ("OBI"), licensee of Station KQNC(FM), Channel 270C2, Quincy, California, and Lobster Communications Corporation ("LCC"), permittee of Station KLIQ(FM), Channel 271A, Shingle Springs, California, submitted a joint petition for rule making asking the Commission to substitute Channel 270B1 for Channel 271A at Shingle Springs, and the modification of the permit for Station KLIQ(FM) to specify operation on the higher powered channel. In order to accommodate this upgrade, the joint petitioners requested the substitution of Channel 271C2 for Channel 270C2 at Quincy, California, the modification of Station KQNC(FM)'s license, accordingly, and the substitution of Channel 276A for Channel 269A at Sutter Creek.[3]

3. A *Notice of Proposed Rule Making* ("*Notice*")[4] was subsequently issued proposing the above referenced channel substitutions. After the deadline for filing comments and counterproposals in this proceeding had passed, Emerald Broadcasting Company, licensee of Station KTHO-FM, Channel 275C2, South Lake Tahoe, California, filed a counterproposal and comments asking the Commission to substitute Channel 298A at Sutter Creek, in lieu of Channel 276A, in order to accommodate its proposal to upgrade Channel 275C2 to Channel 275C at South Lake Tahoe, which was being considered in another proceeding (MM Docket No. 89-402).

4. In the *Report and Order* ("*R&O*"), the Chief of the Allocations Branch granted the request of OBI and LCC by amending the Table of Allotments to reflect the upgrade from Channel 271A to Channel 270B1 at Shingle Springs, and the modification of the permit for Station KLIQ(FM) to specify operation on the higher powered channel. In addition, the substitution of Channel 271C2 for Channel 270C2 at Quincy, and the modification of the license of Station KQNC(FM) was also granted. While recognizing that Emerald's counterproposal was not timely filed, the Commission staff, on its own motion, determined that the public interest would be served by the substitution of Channel 298A - as opposed to Channel 276A - for Channel 269A at Sutter Creek because, *inter alia*, an allotment of Channel 298A would not be subject to a site restriction and because this would enable Emerald to obtain a channel upgrade.

THE PLEADINGS

5. *Petitions for Reconsideration.* Affinity, Hillcrest, and Valley filed petitions for reconsideration in response to the *R&O* in this proceeding. These petitioners do not oppose the allotments made at either Shingle Springs or Quincy. Rather, petitioners object to the substitution of Channel 298A, instead of Channel 276A, at Sutter Creek. In its petition for reconsideration, Affinity asserts that the allotment of Channel 298A to Sutter Creek was in error because it will cause two "grandfathered short spacings," whereas only one "grandfathered short spacing" would be caused if Channel 276A were allotted.[5] Affinity's engineering study shows that, under the new spacing rules, its

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[1] Public Notice of the petitions was given on February 2, 1990, Report No. 1806.

[2] Hillcrest also filed a "Supplement to Petition for Reconsideration." However, it was filed after the deadline for counterproposals and supplements and was not accompanied by a motion to accept. Therefore, in accordance with Section 1.429(d) of the Commission's Rules, this supplement will not be accepted.

[3] Two applications were then pending for the allotment at Sutter Creek. One application had already been dismissed at the time the petition for rule making was submitted, but a petition for reconsideration of that dismissal was pending. Since then, by *Memorandum Opinion and Order, FCC 90-581, released March 21, 1990, Administrative Law Judge Joseph P. Gonzalez granted the application for the allotment at Sutter Creek to Susan E. Turgetto. A construction permit has been issued.*

[4] *See* 4 FCC Rcd 2297 (1989).

[5] On August 18, 1989, the Commission released a *Second*

Colusa station would be short-spaced to the Channel 298A allotment. Similarly, Valley states that Channel 298A at Sutter Creek is short-spaced to its Stockton station. Valley further complains that no effective notice was given regarding the Commission's substitution of Channel 298A for Channel 269A.

6. Hillcrest asserts that it is adversely affected by the Commission's action to allot Channel 298A to Sutter Creek on its own motion because, in 1987, Hillcrest had applied for a construction permit to relocate its Station KXOA-FM to an antenna farm in the Sacramento area. Hillcrest states that its application was ultimately withdrawn due to conflicts with the Federal Aviation Administration. However, Hillcrest alleges it was in the process of preparing a new application to move its antenna to the same location, but at a lower height, when the Commission decided to allot Channel 298A to Sutter Creek. Hillcrest complains that since the Channel 298A allotment would be short spaced to its proposed new transmitter location, this action "will make it impossible to move KXOA's transmitter site" to the antenna farm. Hillcrest also claims that the Commission failed to give proper notice as required by the Administrative Procedure Act. Petitioner further claims that no public interest benefits would be realized from the allotment of Channel 298A to Sutter Creek because this merely accommodates Emerald's counterproposal in another allotment proceeding which may not be granted.

7. *Emerald's Opposition.* In its opposition to petitions for reconsideration, Emerald urges the Commission to maintain the allotment of Channel 298A to Sutter Creek. Emerald charges that the petitions filed by Affinity, Hillcrest, and Valley were untimely and, therefore, procedurally unacceptable. Regarding the merits of each case, Emerald asserts that petitioners' argument that the allotment of Channel 298A to Sutter Creek was in error because it violates the Commission's minimum distance separation requirements is not viable. Emerald charges that petitioners have no basis for objecting to the allotment of Channel 298A at Sutter Creek because the old spacing rules apply to this rule making. Emerald stresses that petitioners' distance calculations are based, wrongly, on the newly revised minimum distance separation requirements rather than on the requirements which were in place when Emerald's original petition for rule making requesting the upgrade of its facilities on Channel 275C2 at South Lake Tahoe was filed.[6] Under the old rules, Emerald asserts, Channel 298A meets all minimum distance separation requirements.

8. Emerald responds to Hillcrest's and Valley's claim that the Commission did not provide effective notice and to Hillcrest's allegations that the Administrative Procedure Act ("APA") had been violated, by stating that the "Commission has the authority, without providing additional notice under the APA, to allocate alternative available channels. Notice under the APA is sufficient so long as the notice indicated that the existing allotment at Sutter Creek would be affected."[7] Emerald cites *Medford and Grants Pass, Oregon* (*"Medford"*),[8] as supportive of this assertion.

9. In addition, Emerald implies that Affinity and Valley do not have standing to dispute the Sutter Creek allotment because neither will be harmed by it. Specifically, Emerald asserts that no petitioner has claimed eligibility for an increase in power, nor are their stations listed in any of the Public Notices naming the Class A stations that were eligible for power increases. Furthermore, Emerald asserts that no petitioner has filed an application to increase its present transmission power.

10. Finally, Emerald opposes Hillcrest's claim that it has an interest in this proceeding based on its speculative plans to move its antenna to a new location in the future. Emerald states that "the Commission cannot entertain the interests of all persons who might have some plan to do something in the future.... Otherwise, the Commission's processes would be completely paralyzed."

11. All three petitioners filed replies to Emerald's opposition. In sum, petitioners refute Emerald's accusation that their petitions were untimely and reassert their claims that they were harmed by the alleged short-spacings caused by the allotment of Channel 298A to Sutter Creek.

DISCUSSION

12. After carefully reviewing the record in this proceeding, we continue to believe that it was proper to substitute Channel 298A for Channel 269A at Sutter Creek, California, in order to accommodate the upgrade of Station KLQC(FM), Shingle Springs, California, from Channel 271A to Channel 270B1. We will address each of the arguments raised by petitioners below.

13. *Timeliness.* To begin with, we find that Emerald is incorrect in asserting that the three petitions for reconsideration were untimely filed. Pursuant to Section 405 of the Communications Act and Sections 1.429(d) and 1.4(b) of the Commission's Rules, petitions for reconsideration in rule making proceedings are required to be filed within 30 days of public notice of the summary of the rule

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Report and Order in MM Docket No. 88-375, *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class 3) and to increase the maximum transmitting power for Class A FM stations*, 4 FCC Rcd 6375 (1989), in which it increased the allowable transmitting power for Class A FM radio stations from 3000 watts to 6000 watts. In conjunction with this power increase, the Commission also increased the minimum distance separation requirements for Class A stations. Existing stations that did not meet the new distance separation requirements were grandfathered, *i.e.*, they would not be forced to comply with the new spacings unless they sought to increase to 6 kW. (*See* para. 51.) However, as stated in that document.(para. 57), and as stipulated in the amended Section 73.213 of the Commission's Rules, "petitions filed prior to October 2, 1989 must comply with, and be processed in accordance with, the [old] rules."

[6] Emerald states that it filed its petition for rule making to upgrade its facilities on August 7, 1989, and offers this as the date to be considered when determining which rules, old or new, to apply to the instant case.

[7] In its opposition comments, Emerald erroneously states in a footnote that no one has expressed an interest in applying for the Sutter Creek allotment. In fact, at the time the *R&O* was released, two applications for the allotment at Sutter Creek were pending. *See* note 3 *supra*.

[8] *See*, 45 RR 2d 359, 362 (Broadcast Bureau 1979), *review denied*, FCC 80-661 (1980).

making action in the Federal Register. In this case, the *Report and Order* was summarized in the Federal Register on December 14, 1989. Applying the extant provisions of Section 1.4(b) for computation of time, the petitions for reconsideration were due on January 16, 1990.[9] Since all three of the petitions were submitted on January 16, 1990, they were timely filed.

14. *Adequacy of Notice.* While Valley and Hillcrest allege that inadequate notice and opportunity for comment in violation of the Administrative Procedure Act was given on the possible allotment of Channel 298A at Sutter Creek, we do not agree. Contrary to their assertions, it is well established under Commission precedent that, in FM and TV allotment proceedings, it is not necessary to set forth "each and every item or aspect of the rule changes to be considered." *Medford and Grants Pass, Oregon*, 45 RR 2d 359, 362 (1979). Instead, Section 553(b) of the Administrative Procedure Act requires that we "disclose either the terms or the substance of the proposed rule or a discussion of the subjects and issues involved." *Id.* As explained in *Medford* and in the Commission's recent decision in *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990), this requirement is met if we identify that we are considering allotting or substituting a channel at a specific community such as Sutter Creek. Here, the *Notice* clearly indicated that we were proposing to substitute Channel 276A for Channel 269A at Sutter Creek in order to accommodate an upgrade at Shingle Springs. The fact that we ultimately allotted Channel 298A instead of Channel 276A at Sutter Creek does not undermine the adequacy of this notice. As we said in both *Medford* and *Pinewood*, it is impossible to know at the time a notice is issued all of the possible channels that will be considered because notices of proposed rule making in FM and TV allotment proceedings elicit counterproposals for different channel allotments. To resolve the conflicts caused by the filing of such counterproposals, the Commission will often allot alternative channels. Indeed, paragraph 2(b) of the Appendix to the *Notice* in this proceeding specifically advised interested parties, such as the petitioners, of this possibility.[10] Therefore, consistent with *Medford* and *Pinewood*, allotting a different channel than the one originally proposed for Sutter Creek is clearly within the scope of the notice of this proceeding and complies with the notice requirements of Section 553(b) of the Administrative Procedure Act.

15. *Short-Spacing Requirement.* Affinity and Valley believe that the allotment of Channel 298A at Sutter Creek would be short-spaced under the Commission's minimum distance separation requirements to their respective stations at Colusa and Stockton, California. We disagree. The petitioners are basing their allegations upon the use of the new, as opposed to the old, spacing rules with respect to the Sutter Creek Class A FM channel. However, when the Commission increased the maximum power for Class A FM channels from 3 kW to 6 kW in the *Second Report and Order* in MM Docket No. 88-375, we expressly stated that rule making petitions filed prior to October 2, 1989, would be processed in accordance with the rules then in effect -- the spacing requirements for 3 kilowatt maximum Class A stations.[11] Since the petition requesting the upgrade at Shingle Springs and the related channel substitution at Sutter Creek was filed on September 16, 1988, and since the proposal by Emerald to allot Channel 298A in lieu of Channel 276A at Sutter Creek was filed on August 7, 1989, it was proper to use the old spacing rules. Utilizing the old spacing rules, Channel 298A at Sutter Creek was not short-spaced to the Colusa or Stockton stations.[12]

16. As a related matter, we do not believe that Hillcrest or Affinity has demonstrated that they would be harmed by the allotment of Channel 298A to Sutter Creek. While they claim that they intend to file applications to change their transmitter sites, they have not done so. Moreover, they have not shown that they would be unable to do so because of the allotment of Channel 298A to Sutter Creek. Specifically, Affinity and Hillcrest have not indicated they could not use the contour protection provisions of Section 73.215 or could not seek a waiver of the Commission's spacing rules in order to accomplish their desired transmitter relocations. Further, they have not sought to show that, on a comparative basis, the public interest benefits from the use of their proposed transmitter sites would outweigh the benefits of the upgrade at Shingle Springs.

17. *Public Interest Considerations.* As a final matter, we disagree with Hillcrest's assertion that there are no public interest benefits in allotting Channel 298A in lieu of Channel 276A at Sutter Creek. As stated in the *R&O*, the public interest will be served by the allotment of Channel 298A to Sutter Creek because this allotment can be made without the imposition of a site restriction. On the other hand, if Channel 276A had been allotted to Sutter Creek, a site restriction of 1.4 miles north would have been required. In addition, the allotment of Channel 298A at Sutter Creek allows the Commission to consider the proposed upgrade of Emerald's station at South Lake Tahoe in MM Docket No. 89-402. This procedure also avoids the need to issue a separate order to show cause in that proceeding to modify the construction permit for the Sutter Creek station and thereby avoids further delay while reducing the administrative burdens on the Commission's staff.

18. In light of the foregoing, we find that petitioners have not raised any arguments which would warrant reconsideration of the *R&O* in this proceeding.

19. Accordingly, IT IS ORDERED, That the Petitions for Reconsideration filed by Affinity, Valley and Hillcrest ARE DENIED.

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[9] Since the thirtieth day following public notice occurred on Sunday, January 14, 1990, and since January 15, 1990, was a federal holiday, the filing date became the next business day, which was January 16, 1990, by operation of Section 1.4(j). We also note that the computation of time provisions of Section 1.4 were recently amended; however, these amendments do not apply to the instant case.

[10] Otherwise, the Commission would be required to issue additional notices in order to resolve conflicting proposals each time it considered an alternative channel. The burden and delay of such additional notices is contrary to the public interest. *See Medford*, 45 R.R. 2d at 362.

[11] 4 FCC Rcd 6375, 6382 (1989).

[12] Moreover, we note that, since the *Report and Order* was adopted in this proceeding, a construction permit was issued for a station on Channel 298A at Sutter Creek which eliminates the short-spacing under the new rules to the Stockton station, and substantially reduces the short-spacing under the new rules to the Colusa station from 11.9 to 0.7 kilometers.

20. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this Memorandum Opinion and Order by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Susan E. Turgetto, 23 Eureka Terrace, Sutter Creek, CA 95685 (Sutter Creek permittee).

21. IT IS FURTHERED ORDERED, That this proceeding IS TERMINATED. Authority for this action is contained in Sections 405 and 303 of the Communications Act of 1934, as amended.

22. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-299

In the Matter of

Amendment of Section 73.606(b), RM-7812
Table of Allotments,
TV Broadcast Stations.
(Tamuning, Guam)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 24, 1992; Released: February 4, 1992

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Guahan Airwaves, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 5838 (1991), proposing the allotment of Channel 20 to Tamuning, Guam, as the community's second local television broadcast service. Petitioner filed comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting UHF Channel 20 to Tamuning, Guam, since it could provide the community with its second local television service. Channel 20 can be allotted to Tamuning in compliance with the Commission's minimum distance separation requirements.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 20, 1992,** the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Tamuning, Guam	14, 20

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 20 at Tamuning are North Latitude 13-29-02 and West Longitude 144-46-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the
Applications of

AMERICAN MOBILE SATELLITE CORPORATION — File No. 420-DSE-P/L-90

For Blanket License for
30,000 Mobile Earth Stations

ROCKWELL INTERNATIONAL CORPORATION — File No. 933-DSE-P/L-90

For Blanket License for
15,000 Mobile Earth Stations

GEOSTAR MESSAGING CORPORATION — File No. 2306-DSE-P/L-89

For Blanket License for
10,000 Mobile Earth Stations

In the 1530-1544 MHz (downlink)
and 1626.5-1645.5 (uplink) Bands

COMMUNICATIONS SATELLITE CORPORATION - WORLD SYSTEMS DIVISION — File No. I-T-C-90-038

For authority pursuant to Section
214 of the Communications Act of
1934, to establish and operate
communications channels via the
INMARSAT system using a MARISAT
satellite and an earth station at
Southbury, Connecticut (WB-36)
for interim use by the authorized
domestic mobile satellite service
(MSS) carrier in its provision of
domestic MSS services

ORDER AND AUTHORIZATION

Adopted: January 21, 1992; Released: February 4, 1992

By the Commission:

I. INTRODUCTION

1. American Mobile Satellite Corporation (AMSC), Rockwell International Corporation (Rockwell) and Geostar Messaging Corporation (Geostar) have filed for blanket authority to operate thirty thousand, fifteen thousand and ten thousand mobile earth stations, respectively, that would provide domestic land mobile satellite service (LMSS). The applicants propose to operate their land mobile earth stations using the International Maritime Satellite Organization (Inmarsat) space segment in the lower L-band[1] on an interim basis until AMSC's upper L-band[2] dedicated domestic mobile satellite service (MSS) system is ready in late 1993 or early 1994.[3] Comments were received on each application.[4] Also, in a related matter, the Communications Satellite Corporation (Comsat) requests authority to establish and operate communications channels via the Inmarsat system using the Marisat F-1 Atlantic Ocean Region (AOR) satellite and an earth station at Southbury, Connecticut.[5] The authority is needed to facilitate AMSC's provision of interim domestic LMSS. As discussed below, we grant the AMSC and Rockwell applications and dismiss the Geostar application without prejudice. We also grant Comsat's request.

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[1] The lower L-band is comprised of the 1530-1544 MHz (downlink) and 1626.5-1645.5 MHz (uplink) frequency bands. These bands currently are allocated to maritime mobile satellite service (MMSS). Downlink generally denotes transmissions from space to ground. Uplink generally denotes transmissions from ground to space. In order to use the proposed earth stations for domestic LMSS, the Communications Satellite Corporation (Comsat) and AMSC separately filed for waivers of the Commission's Table of Frequency Allocations. The Commission granted these waiver requests in Communications Satellite Corporation and American Mobile Satellite Corporation Requests for Interim Waiver of Section 2.106 of the Commission's Rules to Provide AMSS(R) and MSS Services in the Maritime Bands 1530-1544 MHz and 1626.5-1645.5 MHz, 5 FCC Rcd 4117 (1990) (*AMSC Waiver Order*).

[2] The upper L-band is comprised of the 1545-1559 MHz (downlink) and the 1646.5-1660.5 MHz (uplink) frequency bands.

[3] Subsequent to the filing of its application, Geostar was placed under the control and purview of the U.S. Bankruptcy Court for the District of Columbia as a result of it filing for protection under the bankruptcy laws of the United States. See Geostar Corporation, Inc., Case No. 91-00212, U.S. Bankruptcy Court for the District of Columbia. However, Geostar has not withdrawn its application nor its comments. Because we wish to address those issues raised by Geostar, we will consider its comments but dismiss its application for the reasons set forth in the Order.

[4] Aeronautical Radio, Inc. (ARINC) and the Air Transport Association of America (ATA) (hereinafter collectively referred to as ARINC/ATA) filed comments in opposition to the applications of AMSC, Rockwell and Geostar. Geostar opposed the AMSC application and filed general comments on the Rockwell application. AMSC filed comments on the Geostar application and reply comments on the Rockwell application.

[5] Geostar filed a petition to deny the application, raising arguments similar to those raised in the proceedings for the facilities licenses. Comsat, AMSC, and Rockwell opposed the petition to deny. ARINC filed comments supporting the views and arguments expressed by Geostar. Geostar replied to the oppositions. The original application designated the Southbury earth station WA-28 as the antenna via which service would be provided. Comsat has notified the Commission that service will be provided through Comsat General's WB-36 antenna instead.

II. BACKGROUND

2. All three earth station applicants propose to provide interim domestic LMSS via Inmarsat until AMSC's dedicated system is operating. In 1989, AMSC was authorized to construct, launch and operate the U.S. domestic MSS system in the upper L-band.[6] Recently, however, the U.S. Court of Appeals for the District of Columbia remanded the proceeding back to the Commission for reconsideration of the licensing procedure used, particularly the establishment of a consortium.[7] The Commission has recently adopted a final decision reinstating the consortium and granting AMSC a license to construct, launch and operate the upper L-band domestic MSS system.[8]

3. Comsat's application is for authority to lease Inmarsat space segment capacity on the Marisat F-1 AOR satellite located at 106° W.L. and to lease an earth station at Southbury, Connecticut to AMSC for its provision of interim domestic LMSS.[9] Currently, Comsat, as the United States signatory to Inmarsat, is the only U.S. entity permitted to provide Inmarsat space segment or to negotiate leases with prospective U.S. customers. Pursuant to the Comsat/AMSC lease, which AMSC has submitted as part of its application, AMSC is making monthly payments to Comsat for the opportunity to use the Inmarsat space segment capacity.[10]

4. AMSC plans to operate thirty thousand mobile earth terminals primarily on land-based vehicles in U.S. territory with some terminals to be used for maritime communications on inland and coastal waterways.[11] AMSC's proposed mobile earth terminals will have digital data communications capabilities[12] and will operate in the maritime mobile satellite bands of the Inmarsat system, namely the lower L-band. Rockwell intends to operate fifteen thousand mobile earth terminals and to lease Inmarsat's satellite capacity through AMSC as one of AMSC's customers. Rockwell anticipates that the operation of the terminals will be switched over to the dedicated AMSC mobile satellite system as soon as it becomes fully operational. All mobile earth terminals proposed are subject to Inmarsat type-approval. Although they are requesting only authority to operate in the lower L-band at this time, AMSC's and Rockwell's mobile earth terminals will be capable of operating in the lower and upper L-band. AMSC intends to transfer its interim LMSS traffic to its dedicated upper L-band system once its dedicated space segment is in place.[13]

5. Finally, Geostar, which had negotiated a lease for satellite capacity on one of the MAREC satellites, cancelled the lease a month after the Inmarsat Council approved it in late 1990. Geostar states that it intends to resubmit a request to Inmarsat to lease satellite capacity to provide digitized voice, data and facsimile services, perhaps on the Marisat F-1 AOR. However, it has not yet done so.

III. DISCUSSION

6. Although Inmarsat's primary business is to provide international service, permitting its existing in-orbit capacity to be used to provide domestic services until capacity on a domestic system is available will allow the U.S. public to receive needed mobile satellite services as quickly as possible. Consequently, in several recent proceedings, the Commission has suggested that it would be in the public interest to allow Inmarsat space segment capacity to be used to provide domestic MSS on an interim basis.[14] Consistent with these decisions, the Commission recently granted a general waiver of its allocation rules for the lower L-band frequencies, which are allocated for maritime mobile satellite service (MMSS).[15] The waiver permits the lower L-band frequencies to be used to provide domestic land mobile satellite service (LMSS) and certain domestic aeronautical mobile satellite services (AMSS), including aeronautical mobile satellite (R) services (AMSS(R)),[16] on an interim basis using the Inmarsat space segment. This action by the Commission and the proposals made by the applicants allow for the earliest provision of land mobile satellite services in the U.S. Until a dedicated domestic upper L-band system is operational, use of the lower L-band Inmarsat network is the only early service option for domestic LMSS. Moreover, while interim service providers will be required to file a separate application if they wish to provide regular service via the domestic upper L-band system, we expect a smooth transition of domestic LMSS traffic to the AMSC system as soon as possible. In this regard, we will require all interim LMSS service providers to report their transi-

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[6] Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, Gen. Docket 84-1234, 4 FCC Rcd 6041 (1989) (hereinafter *MSS Licensing Order*); remanded Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), *on remand Tentative Decision*, 6 FCC Rcd 4900 (1991).

[7] *See* Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991).

[8] Final Decision, FCC 91-427 (adopted December 27, 1991). *See also* Tentative Decision, 6 FCC Rcd 4900 (1991).

[9] The Marisat satellite has been leased, under special temporary authority, to Inmarsat (File No. 21-DSS-STA-90). Comsat has received special temporary authority pending final action on its Section 214 application to provide the Inmarsat capacity on Marisat F-1 to AMSC (TAO-1813). The special temporary authority was granted without prejudice to any pending issues within the Section 214 application proceeding or any other proceeding related to the provision of service via the Marisat system.

[10] *See supra*.

[11] AMSC states that its terminals will not be used in the aviation safety services.

[12] The proposed data rates of AMSC's proposed interim services will be between 300 and 2400 bps with BPSK modulation, with all operating parameters being subject to Inmarsat type-approval.

[13] AMSC did not request authority to operate upper L-band units because mobile units using these frequencies may be subject to additional technical requirements in order to protect the aviation safety services provided by AMSC. *See* para. 18, *infra*. *See also* MSS Licensing Order, *supra* note 6, at para. 102.

[14] *See* Provision of Aeronautical Services via the Inmarsat System, CC Docket No. 87-75, 4 FCC Rcd 6072 (1989), at note 23; Communications Satellite Corporation, 4 FCC Rcd 7176 (1989), at para. 20.

[15] *See* AMSC Waiver Order, *supra* note 1.

[16] AMSS(R) refers to a class of aeronautical mobile satellite services designed to enhance the safety and regularity of aircraft flights.

tion plans to the Commission within 90 days after the launch of AMSC's first satellite. Interim providers must serve a copy of their plans on the domestic licensee at the same time.

Legal Authority

7. Inmarsat is an independent international organization comprised of over fifty member nations created to establish an international maritime satellite system to improve global maritime communications for distress and safety of life at sea, public correspondence, radiodetermination and the management of ships. Inmarsat was established by a Convention signed by governments and by an Operating Agreement signed by either governments or their designated operating entities.[17] The International Maritime Satellite Telecommunications Act, 47 U.S.C. §§ 751 - 757, declares that it is the policy of the U.S. to support development and operation of a global maritime satellite telecommunications system by Inmarsat. The Act designates Comsat as the sole U.S. operating entity in Inmarsat and as the owner and operator of the United States' share of the jointly-owned international maritime space segment and associated facilities.

8. Inmarsat adopted at its Sixth Extraordinary Assembly of Parties meeting held January 17 - 19, 1989, amendments to its Convention and Operating Agreement to allow it to provide land mobile satellite services. The formal process for acceptance of these amendments by all Inmarsat parties is not yet complete. However, pursuant to the Inmarsat Council's interpretation of its Convention and Operating Agreement, Inmarsat can provide leased capacity service for purposes within the Convention and Operating Agreement as amended, where the adopted amendments have not yet entered into force, provided this service is treated as secondary to services that have already entered into force.[18] Therefore, it appears Inmarsat has authority to provide space segment capacity for the provision of land mobile satellite services. Further, upon review of the record, we conclude that it is in the public interest to allow the U.S. Signatory, Comsat, to provide access to the Inmarsat space segment for the provision of domestic land mobile satellite service, on an interim basis as provided herein. Under this policy, interim access to Inmarsat land mobile space segment by U.S. service providers would be through Comsat.[19]

9. The interim service authorized herein is a domestic service, not an international service, and is an exception to the traditional role Inmarsat has played within the U.S. telecommunications policy - that of providing satellite capacity for communications that are international in character. We recognize that the Inmarsat convention does not limit use of the Inmarsat system to only communications that are international in character, but members of Inmarsat are free to establish national policies defining how the Inmarsat system may be used within their respective jurisdictions. In the United States, we have generally authorized the use of Inmarsat for communications that are international in character except in instances where use of Inmarsat facilities for domestic communications fulfilled specific needs. For example, we have authorized on a temporary limited basis the use of transportable "land-based ship earth stations" to access Inmarsat space segment to meet certain satellite communications needs during the aftermath of natural or human disasters such as earthquakes, volcano eruptions and forest fires, and where these stations are the only adequate means of meeting urgent communications requirements.[20] We wish to emphasize that our decision herein (and in a companion order involving aeronautical service) is also based on the unique need for the development of mobile satellite service within the United States and the specific circumstances surrounding it. While future additional domestic uses of Inmarsat might be found to be in the public interest, Inmarsat should not generally be viewed as an available option for other interim domestic services within the U.S. while the permanent structure for those services is being developed.[21]

Access Procedures

10. By securing Inmarsat space segment capacity prior to requesting authority to operate its interim domestic LMSS system and by filing a copy of its lease, AMSC and, consequently, Rockwell have given the Commission tangible proposals to deliberate. Geostar, however, urges the Commission to delay action on these applications until the Commission establishes general policies and procedures for the interim use of Inmarsat to provide domestic LMSS. Geostar's stated objectives are for the Commission (1) to ensure that all providers of interim land mobile satellite service may obtain service directly from Comsat, (2) to reject AMSC's argument that, pursuant to Commission policy, AMSC is to be the space segment provider for interim MSS and that Geostar must therefore acquire Inmarsat space segment for interim LMSS from AMSC;[22] and (3) to establish procedures to ensure non-discriminatory access to the Inmarsat space segment, including allocation of available capacity among service providers, if necessary. Geostar argues in its opposition to the Comsat Section 214 application concerning the Inmarsat system and the Southbury, Connecticut earth station that the Commission should require Comsat/Inmarsat to provide Inmarsat's space segment on a tariff basis only.

11. We agree with Geostar that interim LMSS providers seeking access to the Inmarsat space segment need not obtain that access through AMSC and should be permitted to deal directly with Comsat. AMSC has been tentatively granted a license to construct and operate the first generation domestic MSS system in the upper L-band.[23] The Commission has nowhere extended this au-

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[17] Convention of the International Maritime Satellite Organization and Operating Agreement of the International Maritime Satellite Organization, September 3, 1976, 31 U.S.T. 1 (entered into force July 16, 1979).

[18] *See* Inmarsat Council, Doc. 31/19, Annex I, A1, B4 and B7(b).

[19] This decision is without prejudice to any possible future action concerning the permanent provision of Inmarsat land mobile services.

[20] *Inmarsat Report and Order*, 4 FCC Rcd at n.26.

[21] To the extent questions may exist regarding our legal authority under the International Maritime Satellite Act to authorize domestic satellite service within the United States, or to authorize Inmarsat land mobile services by Comsat, we believe we have authority under section 4(i) of the Communications Act to authorize such service on an interim basis under the unique circumstances at issue here.

[22] *See* Comments of AMSC in response to Application of Geostar (File No. 2306-DSE-P/L-89) (May 7, 1990) at 9-11.

[23] *See* note 6, *supra*.

thorization to provide that AMSC is to be the sole space segment provider of *interim* land mobile services in the United States. Indeed, in the *MSS Licensing Order* the Commission expressly deferred the resolution of issues relating to the provision of interim mobile satellite service, stating that "we are willing to explore a licensee's options for interim service when applications are filed seeking such authority and are subject to public notice and comment."[24]

12. These applications are now before us. We find that it would not serve the public interest to make AMSC the exclusive point of customer contact for interim land mobile services using the Inmarsat space segment. Competition in the provision of interim domestic land mobile services using the Inmarsat space segment should promote efficiency and should speed the introduction of new service offerings to the public.[25] We do not agree with AMSC that its involvement is necessary to ensure that interim LMSS will be provided in a manner that is consistent with the Commission's MSS policies. Each application to provide interim service will be examined by the Commission for compliance with the policies for interim LMSS set forth herein and each licensee will be held responsible for its system's operations. We further disagree with AMSC that its involvement is also necessary to ensure a smooth transition when land mobile satellite operations are transferred from the Inmarsat space segment to the AMSC space segment when it becomes operational. Any provider that may be licensed to construct and operate earth stations to provide interim domestic land mobile satellite service using the Inmarsat space segment will be required to file a new application if it wishes to provide service using the AMSC space segment. At that time, the applicant will be required to demonstrate that its ground segment is compatible with AMSC's space segment and that the ground stations satisfy the upper Lband allocation requirements.[26] It is in the provider's best interests to develop an earth station segment that can be readily integrated into AMSC's space segment, and we expect that this will be the case.[27] However, this is a decision that is appropriately left to the provider.

13. Accordingly, we adopt a policy that allows all providers that wish to provide interim domestic land mobile satellite service using the Inmarsat space segment to obtain access to the Inmarsat space segment directly through Comsat. We will, however, require applicants to acquire access to Inmarsat's space segment prior to applying for a license and to file that lease as part of its application. This will ensure that the interim LMSS applicants will have access to the space segment and will be capable of providing service immediately. It will also ensure that the applicant's proposal conforms to Inmarsat's technical standards.[28]

14. With respect to procedures to govern access to the Inmarsat space segment, we do not believe that any formal requirements are necessary at this time. It is not necessary for the Commission to allocate Inmarsat capacity among prospective interim domestic LMSS providers, as Geostar urges we do. Geostar does not allege that there is a scarcity of space segment capacity nor do we have any reason to believe that such is the case. Indeed, Geostar was able to secure a lease for space segment from Inmarsat for LMSS. Furthermore, Comsat has not requested and the Commission is not bound to require Comsat to provide Inmarsat space segment capacity under tariff. While Geostar urges the Commission to require Comsat to tariff its service "to further insure non-discriminatory access to Inmarsat space segment by end-service providers," Sections 201(b) and 211(a) of the Communications Act of 1934, 47 U.S.C. §§ 201(b), 211(a), allow carriers to provide service to other carriers by contract as well as by tariff.[29] Such contracts are subject to the non-discrimination requirements of the Act, 47 U.S.C. § 202. Thus, Geostar's concerns are adequately addressed under the provisions of the Communications Act.

15. We find no persuasive reasons to deny, delay or condition AMSC's or Rockwell's requests based on Geostar's comments regarding access to the Inmarsat space segment. It appears that Comsat and AMSC have acted within the statutory prescriptions for carrier-to-carrier exchange of service contracts in the negotiation of their contract, and the contract appears reasonable. Comsat dealt with AMSC on a first-come, first-served basis. Moreover, it appears that Comsat was willing to contract directly with other qualified carriers, as documented by Geostar's lease. The amount of capacity leased to AMSC does not appear excessive or designed to deny others access. Thus, AMSC was provided with non-discriminatory access to the Inmarsat space segment and its contract with Comsat does not preclude other carriers from providing interim domestic LMSS using the Inmarsat space segment. AMSC states that it is prepared to offer service immediately.[30] We see no reason to prevent it from doing so under the access procedures we have adopted herein.

Technical Issues

16. In opposition to the proposals, ARINC/ATA raise several technical issues. ARINC/ATA first argue that a large number of lower L-band mobile units might be

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[24] 4 FCC Rcd at 6058. The policies enunciated in Provision of Aeronautical Services via the Inmarsat System, Report and Order, Gen. Docket No. 87-75, 4 FCC Rcd 6072 (1989), 6089 n.23, *recon. pending, (Inmarsat Order)*, are not to the contrary. While AMSC correctly notes that the Commission stated that it would not preclude Inmarsat from providing capacity for the provision of interim domestic aeronautical service to the U.S. domestic MSS licensee, the Commission did not provide that the domestic licensee was to be the *only* provider of interim domestic service via the Inmarsat space segment.

[25] We have made a similar finding in a companion order adopted today regarding the provision of interim domestic aeronautical services using the Inmarsat space segment. Aeronautical Radio, Inc., File No. I-S-P-90-002 (adopted January 21, 1992).

[26] *See* para. 19, *infra*.

[27] Indeed, we will require all interim domestic LMSS providers authorized to transfer interim operations to report their transition plans within 90 days of the launch of AMSC's first satellite. *See* para. 6, *supra*.

[28] *See* paras. 16-18, *infra*.

[29] *See* Bell Tel. of Pa. v. FCC, 503 F.2d 1250 (3rd Cir. 1974), *cert. denied*, 422 U.S. 1026(1975).

[30] We agree with AMSC that it may serve both resellers and end users. As a carrier, however, AMSC's provision of service to end users must be made on a common carrier basis.

deployed prior to establishing priority and preemptive access for aeronautical safety communications and type acceptance criteria for LMSS terminals necessary to protect aviation safety services operating in the same band. They therefore seek that we delay authorizing the applicants' requests until these issues are addressed or, at a minimum, that we condition any grant to ensure that aviation safety services are protected.[31]

17. We conclude from the evidence presented that there is no technical or procedural reason to delay action on or condition the applicants' blanket licenses for interim domestic LMSS operations in the lower L-band in the manner suggested by ARINC/ATA. With respect to the issue of priority and preemptive access, the lower L-band is allocated domestically and internationally to the maritime mobile satellite service. AMSS(R) is permitted in this band only pursuant to a waiver of the Table of Frequency Allocations.[32] Pursuant to this waiver, AMSS(R) is not entitled to receive priority and preemptive access in this band, as it is in the upper L-band.[33] Thus, contrary to ARINC/ATA's assertion otherwise, no issues involving priority and preemptive access for AMSS(R) need to be addressed here. Furthermore, we do not believe it necessary for the Commission to adopt type acceptance criteria for LMSS terminals that are to operate in the lower L-band. In order for AMSC or Rockwell to access the Inmarsat network, they must use land mobile earth terminals type accepted by Inmarsat, thus assuring the technical integrity of Inmarsat's system. It is reasonable to conclude that Inmarsat will not type accept any equipment it determines may pose a threat to its system or cause harmful interference to any of its users, including aeronautical safety services. It is also reasonable to conclude that Inmarsat is best situated to determine what effect any equipment may have on its system. Thus, we need not delay considering these interim service requests or condition any grants based on ARINC/ATA's concerns regarding AMSS(R) operations in the lower L-band.

18. ARINC/ATA also argue that there is a "real possibility" of interference to aviation safety services provided in the upper L-band resulting from widespread land mobile operations in the adjacent lower L-band frequencies.[34] ARINC/ATA contend that the Commission should, therefore, collectively limit the AMSC, Rockwell and Geostar authorizations to no more than one hundred units until such protective rules are adopted. ARINC/ATA provide no technical support for their contention that lower L-band operations will threaten adjacent upper L-band aviation safety operations. Without credible, concrete technical analysis clearly demonstrating that interim lower L-band LMSS operations, in fact, pose an actual interference threat to upper L-band operations, we will not limit the system size requests of the applicants.

19. Finally, ARINC/ATA request that we condition any blanket licenses granted for interim domestic LMSS operations in the lower L-band to require the applicants to demonstrate how their terminals will protect aeronautical safety services once AMSC's dedicated upper L-band MSS system is operational.[35] We believe, however, that any discussion regarding the protection of AMSS(R) operations in the upper L-band is premature. The authority requested by AMSC and Rockwell involves the lower

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[31] Specifically, ARINC/ATA request that we require the applicants to demonstrate in detail that the design for all the components in the interim system will satisfy technical criteria designed to protect aeronautical safety services. ARINC/ATA suggest the following 'minimum' requirements:

> o Conformance with ARINC Characteristic 741;
>
> o Compliance with the performance criteria of RTCA SC-165;
>
> o Full compatibility and interoperability with all Inmarsat aeronautical services;
>
> o Protection of Inmarsat use of the spectrum, especially from undisciplined land mobile users;
>
> o Capability for restoration of AMSC service using Inmarsat; and
>
> o Capability to be shut down in the event of malfunction or to accommodate the FCC-mandated priority and preemptive access to the AMSS spectrum for AMSS(R) communications contained in Docket 84-1234.

They further request that we condition the applicants' licenses in the same manner we conditioned ARINC's license in Memorandum Opinion and Order, 5 FCC Rcd 3038 (1990) (hereinafter the *Arinc Waiver Order)*. The Commission granted ARINC, Northwest Airlines, Inc. (Northwest), and United Air Lines, Inc. (United) a waiver to use the maritime L-band frequencies and non-type accepted avionics to provide aeronautical satellite communications via the INMARSAT space segment. The Commission conditioned the waiver of aeronautical earth station type acceptance requirements on the following:

a) The equipment to which the type acceptance waivers apply must meet all technical standards promulgated in future Commission actions;

b) The waiver of type acceptance was limited to no more than twenty-six total aircraft installations for Northwest Airlines and no more than eighteen for United Airlines; and

c) Operators of the equipment must give notice identifying with particularity each equipped aircraft to the Private Radio Bureau Licensing Facility in Gettysburg, Pennsylvania.

It is important to note that the waiver of type acceptance was provided for the number of aircraft installations requested by Northwest and United Airlines.

[32] In fact, AMSS(R) and LMSS are permitted in the lower L-band on an interim basis because these services can operate without causing interference to the maritime services that are authorized to operate in this band. *AMSC Waiver Order, supra* note 1, at para. 8.

[33] Indeed, both AMSS(R) and MSS services were permitted on the condition that distress and safety maritime communications be protected from interference from any services offered pursuant to the waiver. *AMSC Waiver Order, supra* note 1, at para. 12.

[34] Domestically, the upper L-band is allocated to AMSS(R) and MSS on a shared basis. Specifically, AMSS(R) is primary and MSS secondary in the "lower" portion of the upper L-band (1545-1549.5/1646.5-1651 MHz); AMSS(R) and MSS are co-primary in the remainder of the band (1549.5-1558.5/1651-1660 MHz), with AMSS(R) provided priority access and real-time preemptive capability. 47 C.F.R. § 2.106.

[35] ARINC/ATA request that we impose the same conditions as they suggested for the interim authorizations. *See* note 31, *supra*.

L-band frequencies only. Should AMSC or Rockwell later seek to operate their land mobile earth terminals in the upper L-band using AMSC's space segment, they will have to reapply with the Commission and, at that time, these applications will be reviewed for compliance with the upper L-band allocation requirements.[36] Therefore, we conclude there is no technical reason why we should deny, delay action on, or condition AMSC's or Rockwell's requests. For the same reasons, we grant the application of Comsat to provide interim space segment for the AMSC service.

Geostar

20. In its application, Geostar requests authority to construct and operate mobile earth stations under a blanket license. Geostar also seeks Commission assurance that it will be allowed direct access to Inmarsat's space segment capacity. In contrast to AMSC, however, Geostar has no lease with Comsat to access Inmarsat's space station capacity and has no concrete schedule for beginning service. The action we take in this order allows AMSC to access the Inmarsat space segment directly to provide interim LMSS operations but does not preclude other qualified applicants from providing interim LMSS services. However, those applicants must have a lease in hand with Comsat and be ready to proceed with those proposed operations immediately, as AMSC has done. Geostar may resubmit its application to provide domestic LMSS services when it has a lease with Inmarsat and is ready to proceed with its proposed service.

Ordering Clauses

21. Accordingly, IT IS ORDERED that application File No. 420-DSE-P/L-90 IS GRANTED and American Mobile Satellite Corporation IS AUTHORIZED to operate thirty thousand mobile earth stations anywhere within the United States for land mobile domestic communications using the Marisat F-1 AOR satellite until the dedicated U.S. system is operational.

22. IT IS FURTHER ORDERED that application File No. 933DSE-P/L-90 IS GRANTED and Rockwell International Corporation IS AUTHORIZED to operate fifteen thousand mobile earth stations anywhere within the United States for land mobile domestic communications as a customer of American Mobile Satellite Corporation using the Marisat F-1 AOR satellite until the dedicated U.S. system is operational.

23. IT IS FURTHER ORDERED that application File No. 2306DSE-P/L-89 IS DISMISSED without prejudice.

24. IT IS FURTHER ORDERED that application File No. I-T-C90-038 IS GRANTED and the Communications Satellite Corporation - World Systems Division IS AUTHORIZED to establish and operate communication channels via the Inmarsat system using the Marisat F-1 AOR satellite and an earth station at Southbury, Connecticut, Call Sign WB-36, for interim use in the provision of domestic land mobile satellite service until the dedicated U.S. system is operational.

25. IT IS FURTHER ORDERED that AMSC, Rockwell and all other interim domestic LMSS providers shall file with this Commission and serve on the domestic licensee a transition plan within 90 days after launch of a domestic MSS spacecraft. The transition plan shall detail the steps that will be taken to move all domestic LMSS traffic to the new satellite without disruption to customers.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[36] *See* para. 12, *supra*. The upper L-band allocation recognizes that AMSS(R) communications have priority and preemptive access throughout that band. *See* note 34, *supra*. All operations in that band will have to perform consistent with the AMSS(R) requirements. The Radio Technical Commission for Aeronautics (RTCA) in its special committee working group SC-165 is currently developing a performance criteria for aeronautical mobile terminals which eventually may become the basis for a United States domestic standard. Special Committee 165 of the RTCA is a domestic public committee sponsored by the Federal Aviation Administration. The committee is currently developing Minimum Operational Performance Standards (MOPS) for domestic AMSS(R) systems. In 1988, the International Civil Aviation Organization (ICAO) established the Aeronautical Mobile-Satellite Service Panel (AMSSP) to develop Standards and Recommended Practices (SARPS) to further the specific technical work necessary to develop the framework for a worldwide, inter-operable aeronautical mobilesatellite service for safety communications. The Commission expects the United States domestic standards to be compatible with those eventually adopted by ICAO.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech	Transmittal Nos.
Operating	499, 500, 501, 509, 526,
Companies	535, 557, and 573

Revisions to Tariff F.C.C. No. 2

Open Network Architecture

Local Exchange Carrier Line
Information Database

MODIFICATION OF ORDERS

Adopted: January 24, 1992; Released: January 24, 1992

By the Chief, Common Carrier Bureau:

1. Ameritech Operating Companies (Ameritech) filed the above-captioned tariff revisions to implement its Open Network Architecture (ONA) Plan, as required by the Commission's *Part 69 ONA Order*.[1] On December 27, 1991, the Common Carrier Bureau (Bureau) suspended Ameritech's tariff revisions for one day, imposed an accounting order, and instituted an investigation into their rates.[2]

2. Ameritech, Bell Atlantic Telephone Companies, BellSouth Telephone Companies, GTE Telephone Operating Companies, NYNEX Telephone Companies, Pacific Bell Telephone Companies, Southwestern Bell Telephone Company, United Telephone System, and US West, Inc., last year filed petitions for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69, to establish rate elements for transmission services connecting customers to the carriers' common channel signaling networks (CCS) and to establish rate elements for access to the data in their line information databases (LIDB). The above carriers also filed tariffs for access to the CCS networks and to LIDB. On December 30, 1991, the Bureau granted the requested waivers to the extent that they complied with the *Southwestern Bell LIDB Order*,[3] suspended the carriers' CCS and LIDB access charges for one day, imposed an accounting order, and instituted an investigation into their rates.[4]

3. Section 1.113(a) of the Commission's Rules, 47 C.F.R. § 1.113(a), provides in pertinent part that "[w]ithin 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion." Accordingly, the Bureau hereby modifies the *Ameritech ONA Tariff Order* by substituting the following paragraph for paragraph 51. New paragraph 51 reads as follows:

> 51. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Ameritech Operating Companies SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

4. Also pursuant to Section 1.113(a) of the Commission's Rules, 47 C.F.R. § 1.113(a), the Bureau hereby modifies the *LEC LIDB Order* by substituting the following paragraph for paragraph 59. New paragraph 59 reads as follows:

> 59. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telephone Companies, GTE Telephone Operating Companies, NYNEX Telephone Companies, Pacific Bell Telephone Companies, Southwestern Bell Telephone Company, United Telephone System, and US West, Inc., SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

5. Accordingly, IT IS ORDERED that In the Matter of Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2, Open Network Architecture, Memorandum Opinion and Order, DA 91-1633, released Dec. 27, 1991 (Com.Car.Bur.) IS MODIFIED to reflect the replacement of paragraph 51, with new paragraph 51, as specified in paragraph 3, *supra*.

6. IT IS FURTHER ORDERED that In the Matter of Local Exchange Carrier Line Information Database, Order, DA 91-1637, released Dec. 30, 1991 (Com.Car.Bur.) IS MODIFIED to reflect the replacement of paragraph 59, with new paragraph 59, as specified in paragraph 4, *supra*.

7. IT IS FURTHER ORDERED that this Order takes effect on the date of its adoption.

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[1] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 8979, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) (*Part 69 ONA Order*).

[2] Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2, Open Network Architecture, Memorandum Opinion and Order, DA 91-1633, released Dec. 27, 1991 (Com.Car.Bur.) (*Ameritech ONA Tariff Order*).

[3] Southwestern Bell Telephone Company, Petitions for Waiver of Part 69 of the Commission's Rules, 6 FCC Rcd 6095 (Com.Car.Bur. 1991) (*Southwestern Bell LIDB Order*).

[4] In the Matter of Local Exchange Carrier Line Information Database, Order, DA 91-1637, released Dec. 30, 1991 (Com.Car.Bur.) (*LEC LIDB Order*).

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-281

In the Matter of

Rules and policies regarding
calling number identification service.

EXTENSION OF TIME

Adopted: January 24, 1992; Released: January 28, 1992

By the Chief, Common Carrier Bureau:

1. Requests for an extension of time to file reply comments in the referenced proceeding have been filed by the State of New York, Department of Public Service (40 days requested), the California Public Service Commission (40 days requested), the Ad Hoc Telecommunications Users Committee (45 days requested) and the National Association of Regulatory Utility Commissioners (50 days requested).

2. The movants cite the large number of parties filing initial comments (63 commenters), the lengthy and complex nature of the subject matter and the fact that New York and California anticipate resolving pending caller ID proceedings in their respective states by late February or early March.

3. Good cause has been shown for the grant of an extension of time. The issues raised in the voluminous initial comments in this proceeding are numerous and complex. Moreover, we expect that resolution of the ongoing proceedings in California and New York will assist the Commission in its deliberations. Therefore, we will extend the deadline for filing reply comments forty days to **March 16, 1992.**

4. IT IS THEREFORE ORDERED that the requests of the State of New York, Department of Public Service, the California Public Service Commission, the Ad Hoc Telecommunications Users Committee and the National Association of Regulatory Utility Commissioners for an extension of time to file comments ARE GRANTED to the extent indicated above. The time for filing reply comments in this proceeding is extended forty days from **February 5, 1992** to **March 16, 1992.**

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 90-480

In the Matter of

Amendment of Parts 13 and 80 of the Commission's Rules to implement the Global Maritime Distress and Safety System (GMDSS) to improve the safety of life at sea.

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 16, 1992; Released: February 7, 1992

By the Commission: Commissioner Marshall not present.

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I. INTRODUCTION

1. This *Report and Order* implements the Global Maritime Distress and Safety System (GMDSS) in the Commission's Maritime Service Rules substantially as proposed. By this action, we adopt the requirements of the international Safety of Life at Sea (SOLAS) Convention for large oceangoing U.S. vessels. These requirements will be phased in during the 1992 to 1999 time period.

II. BACKGROUND

2. The GMDSS represents the biggest improvement in marine safety since the first maritime regulations were enacted following the sinking of the *Titanic* in 1912. It is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems. By incorporating these advanced communications techniques into the safety system and using ship-to-shore communications links, the GMDSS will significantly improve safety of life and property at sea throughout the world.[1] It represents more than a decade of work by the International Maritime Organization (IMO) and the International Telecommunication Union (ITU).[2] In November 1987, the ITU adopted GMDSS associated revisions to the Radio Regulations. *See*, Final Acts of the World Administrative Radio Conference for Mobile Services (MOB-87), Geneva, 1987. In November 1988, the IMO adopted amendments to the 1974 SOLAS Convention to implement the GMDSS internationally. *See*, Final Acts of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System, London, 1988 (GMDSS Amendments). In October 1990, we proposed to

[1] The advent of satellite and automated terrestrial communications systems offers important advantages for distress and safety communications. The current distress and safety system is primarily a manual, ship-to-ship system that relies on Morse code radiotelegraphy on 500 kHz and voice radiotelephony on 2182 kHz and 156.8 MHz. Its effectiveness depends on the location of the nearest vessel, propagation conditions, and the technical proficiency of the radio officer. Under the GMDSS, licensed radio operators on board GMDSS-equipped ships will use modern radio equipment to send distress alerts over long distances with assurance that they will be received on shore.

[2] The IMO and the ITU are both agencies of the United Nations. The IMO specifies regulations for the maritime service, such as equipment carriage requirements for certain classes of ships. The ITU specifies regulations for radio matters, such as operating procedures and frequency allotments.

adopt the international GMDSS provisions for U.S. vessels in a *Notice of Proposed Rule Making* (*Notice*), PR Docket No. 90-480, 5 FCC Rcd 6212 (1990).

3. Parts 13 and 80 of the Commission's Rules currently specify the radio operator licenses and the radio equipment requirements for U.S. vessels. They are based on international requirements contained in the 1974 SOLAS Convention and similar domestic requirements delineated in the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. §§ 351-364 . Ships subject to either the SOLAS Convention or the Communications Act are required to carry certain radio equipment and personnel for safety purposes. These ships are termed "compulsory" ships. In the *Notice*, we proposed revising our requirements for compulsory radio-equipped ships to reflect the international GMDSS provisions.[3] An extension of time to file comments and reply comments was granted on December 24, 1990. *Order*, PR Docket No. 90-480, 6 FCC Rcd 6 (1990). The comment period closed on June 7, 1991, and the reply comment period closed on July 6, 1991. We received twenty-two comments, seven reply comments, and two *ex parte* comments.[4] (Appendix A lists the commenters.)

III. DISCUSSION

4. We will begin our discussion with a brief description of the GMDSS outlining its differences from the present maritime distress communications system. We will also clarify the relationship of the SOLAS Convention and the Communications Act, and consider the general issue of whether to adopt the GMDSS for U.S. vessels. We will then address the controversial matters concerning the radio operator and equipment maintenance issues. Finally, we will discuss the operational and technical issues relating to satellites, terrestrial systems, and equipment performance requirements.

A. GMDSS Implementation

5. The GMDSS is primarily a ship-to-shore system, though it retains ship-to-ship capability.[5] The GMDSS consists of several communication systems, some of which are new, but most of which have been in operation for several years. The COSPAS-SARSAT satellite system, which has been in operation since 1982, provides distress alerting using the 406 MHz emergency position-indicating radiobeacon (406 MHz EPIRB).[6] The International Maritime Satellite Organization's (INMARSAT) maritime mobile satellite system has also been in operation since 1982 and forms a major component for distress alerting and communications. In addition to satellites, new automated terrestrial data systems and existing systems are combined into one overall communications system. The GMDSS will provide for new digital selective calling (DSC) services on high frequency (HF), medium frequency (MF), or very high frequency (VHF) bands depending upon the location of the ship in distress. These new DSC services will be used for ship-to-ship, ship-to-shore, and shore-to-ship automatic alerting, while existing terrestrial HF, MF, and VHF radiotelephony equipment provides distress, urgency, and safety related communications. The GMDSS will enhance search and rescue (SAR) operations through the use of the new 9 GHz search and rescue transponder (SART). Finally, it will create a global network for the dissemination of maritime safety information (MSI) using three systems: NAVTEX, IMMARSAT enhanced group calling (EGC), and HF narrow-band direct-printing (NBDP) radiotelegraphy.

6. The two most notable features of the system are that it is based on sea areas of operation and that it offers multiple communications options. The first of these features, sea area basing, divides the seas into four-communications areas. Sea Area A1 is the area within VHF radiotelephone coverage of at least one coast station at which continuous DSC is available (approximately 20-30 miles). Sea Area A2 is the area within MF radiotelephone coverage of at least one coast station at which continuous DSC is available (approximately 75-150 miles), excluding Sea Area A1. Sea Area A3 is the area within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available (approximately 70^0 North to 70^0 South), excluding Sea Areas A1 and A2. Sea Area A4 is the remainder of the seas of the world (essentially the polar regions) and relies primarily on HF communications. Sea areas are established by individual countries, which equip their shore stations with appropriate VHF, MF, HF or satellite facilities to "cover" particular segments of ocean.[7]

7. The second significant feature of the GMDSS, multiple communications options, ensures that each ship using the GMDSS will have at least two options of distress alerting appropriate to its sea area. This redundancy will minimize the chance that a ship in distress will be unable to communicate because of weather, radio propagation difficulties, equipment failure, or other circumstances. This feature represents a significant improvement over the

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[3] The *Notice* stated that the proposed rules addressed compulsory ships. It defined "compulsory ships" as cargo ships 300 tons gross tonnage and over and all passenger ships that carry more than twelve passengers regardless of their size, as specified in the SOLAS Convention or Title III, Part II of the Communications Act. *See Notice*, *supra*, at para. 21.

[4] Additionally, we received a letter signed by Thomas C. Harper, president of the Radio-Electronic Officers Union (ROU), stating that comments filed in the name of the ROU and bearing Lewis D. Smith's signature were not authorized by the ROU Executive Board. ROU indicates that the filing does not represent ROU's views and requests that the filing be "expunged from the files of the FCC...." Thus, we have not considered the disputed comments, as requested by ROU.

[5] This section contains a very brief overview of the GMDSS. A more detailed description of the GMDSS is contained in the *Notice*. *See Notice*, *supra*, at paras. 8-20. Additionally, a simplified diagram of the GMDSS radiocommunication systems is presented in Appendix B.

[6] COSPAS-SARSAT is a joint international satellite-based search and rescue system established by Canada, France, USSR, and the United States to locate emergency radiobeacons transmitting on 121.5 MHz and 406 MHz. The U.S. satellites in this system also receive on 243 MHz.

[7] For example, a shore station must add VHF-DSC equipment to establish an A1 sea area for a particular geographic region. IMO has delineated the various sea areas, both established and planned, in the Master Plan of Shore-based Facilities for the GMDSS (Master Plan). *See* IMO COM 37/WP. 2, July 10, 1991.

current distress system. A comparison of the primary features of the current distress and safety system and the GMDSS is given below.

CURRENT DISTRESS & SAFETY SYSTEM	GMDSS
Primarily a ship-to-ship system	Primarily a ship-to-shore system
Radio equipment requirements determined by size of ship	Radio equipment requirements determined by area of ship operation
Nominal communications range is approximately 150-200 miles	Communications range can be worldwide for ships using HF or satellites
Communications quality depends upon propagation conditions	Communications quality improved by use of satellites and multiple frequency digital data transmissions
Manual watch on distress frequencies required	Automatic watch on distress frequencies
Morse code skilled radio officer is required on ships >1600 tons	Licensed radio operator required on all ships
Different requirements for ships of different sizes	All ships over 300 gross-tons and all passenger ships are subject to identical requirements

8. The basic concept of the GMDSS is that SAR authorities on shore, as well as shipping in the immediate vicinity of the ship in distress, can be rapidly alerted to a distress incident. The shore-based authorities designated as a Rescue Coordination Center (RCC) can then assist in coordinating rescue operations with minimal delay. In the United States, the Coast Guard is the designated maritime SAR organization and will operate the necessary RCCs. The particular GMDSS equipment used to communicate varies by sea area and may have several alternatives. The following is a simplified chart of GMDSS equipment and its primary functions assuming a mid-ocean distress situation:

Shipboard radio equipment	Function
406 MHz EPIRB	Ship-to-shore alerts via COSPAS-SARSAT
VHF radio (DSC and voice)	SAR communications
MF radio (DSC and voice)	Ship-to-ship alerts and communications
INMARSAT ship earth station (SES) plus EGC capability*	Ship-to-shore alerts, communications, and MSI (SafetyNet)
NAVTEX receiver	MSI (518 kHz)
9 GHz SART	SAR locating beacon
Two-way VHF portable radios	SAR communications
2182 watch receiver/auto alarm	Receipt of 2182 kHz alerts until 1999

*Alternatively, a HF radio (DSC, voice, and NBDP) which includes a HF-DSC watch receiver may be used in lieu of the INMARSAT SES/EGC terminal. The HF radio is required for sea area A4.

9. By the terms of the SOLAS Convention, the GMDSS provisions apply to cargo ships of 300 tons gross tonnage and over and ships carrying more than twelve passengers traveling on international voyages. Title III, Part II of the Communications Act sets forth radio provisions that apply to these same ships when traveling in the open sea. Because the same radio requirements are currently specified for these ships for both international and domestic voyages, we proposed to adopt the GMDSS provisions for ships subject to either the SOLAS Convention or Title III, Part II of the Communications Act. Thus, this proceeding addresses cargo ships of 300 tons gross tonnage and over when traveling on international voyages or in the open sea, and to all passenger ships irrespective of size when traveling on international voyages or in the open sea. We will refer to these ships as compulsory ships, as defined in paragraph 3 above, or simply as GMDSS ships.

10. The SOLAS Convention specifies, and we proposed, the following implementation dates:[8]

February 1, 1992 voluntary compliance, any ship may be GMDSS-equipped

August 1, 1993 all compulsory ships must have satellite EPIRB and NAVTEX

February 1, 1995 newly constructed compulsory ships must be GMDSS-equipped

February 1, 1999 all compulsory ships must be GMDSS-equipped

11. In response to the *Notice*, several commenters advocate retention of the current requirements either permanently or until February 1, 1999. Generally, they wish to retain the requirement for radio officers or delay implementation of the GMDSS in the United States. Many of the radio officers also want to retain the carriage requirements for manual Morse code radiotelegraphy on 500 kHz, essentially opposing any change. We have considered all arguments carefully and emphasize that the implementation of the GMDSS is mandated by the SOLAS Convention, to which the United States is signa-

[8] The GMDSS implementation dates are summarized in Appendix C.

tory.[9] Thus, we have treaty obligations to enact certain GMDSS provisions as early as August 1993. The remaining provisions must be enacted for new ships by 1995, and for existing ships by 1999. The SOLAS Convention also permits ships to voluntarily comply with the GMDSS in lieu of the current manual Morse code system as early as February 1, 1992. We agree with this schedule for U.S. ships, although U.S. ships cannot eliminate the current manual radiotelegraphy system and radio officers until changes to the Communications Act are adopted. The GMDSS represents more than a decade of development by the IMO. The GMDSS offers significant advantages over the current system, and the United States has been a strong advocate of the GMDSS internationally. It was unanimously adopted by 66 countries representing the world maritime community. Moreover, if U.S. vessels are delayed in implementing the GMDSS, American lives and property could be at risk by perpetuating an outmoded ship-to-ship system that is less able to communicate with ships and shore facilities of the major maritime nations.[10] Although some commenters claim that the GMDSS should be delayed because there are insufficient RCCs and SAR facilities in many parts of the world for the shore-based system to be effective, this is not a sound argument. IMO considers these facilities to be adequate, and, furthermore, even a distant RCC can coordinate rescue resources and efforts for a ship in distress. Compared to a ship equipped under the current distress and safety system, the GMDSS will enhance a ship's ability to communicate during a distress by ensuring multiple communications options. We therefore conclude that adoption of the GMDSS is in the public interest and it should not be delayed. Comments regarding radio personnel and equipment requirements for GMDSS ships were examined and many changes have been incorporated where appropriate.

B. Radio Operators and Radio-equipment Maintenance

12. Radio operators and radio-equipment maintenance proved to be the two most controversial issues addressed in comments. In the *Notice*, we proposed to follow the GMDSS provisions as prescribed by the IMO Conference:

> - For radio operations, GMDSS ships must carry personnel qualified for distress and safety radiocommunications purposes. The personnel should be holders of certificates specified in the Radio Regulations as appropriate,[11] any one of whom shall be designated to have primary responsibility for radiocommunications during distress incidents.
>
> - For radio maintenance, the availability of the functional requirements of the radio equipment must be ensured by using such methods as duplication of equipment, shore-based maintenance, or at-sea maintenance, or a combination of these methods (two of these three methods are required in sea areas A3 and A4).

13. Specifically, we proposed that each GMDSS ship have at least one qualified radio operator who holds a GMDSS-endorsed license issued by the Commission, and that a qualified GMDSS operator must be designated to act as a dedicated communications operator in cases of distress. Because GMDSS ships are not equipped with manual Morse code telegraphy equipment, they would not be required to carry radio officers.[12] We also proposed the flexible approach to maintenance enacted by the IMO. IMO regulations allow ship owners the option of choosing among shore-based maintenance, duplication of equipment, and at-sea maintenance. Ships operating in sea areas A3 and A4 would be required to use two of these methods. We requested comments on whether a certificate is needed for the at-sea maintainer to ensure the functioning of equipment during a distress situation. *See Notice* at paras. 40-41.

14. The American Radio Association (ARA), all "individual radio officers"[13] that commented, and three other commenters oppose the GMDSS generally and insist that each ship must have an individual capable of performing on-board maintenance and emergency repairs of radio equipment. *See, e.g.*, comments of ARA at 1-4, Spencer at 1, Reno at 6, Zbrozek at 3, and Phelps at 1-2. Some also argue that shore-based maintenance and duplication of equipment are not viable options. *See, e.g.*, Reno comments at 7. ARA argues that technological advances like the GMDSS have not removed the need for trained shipboard radio officers/radio electronics officers (RO/REO). It states that a trained and dedicated communications specialist is essential to ensure emergency communications during maritime accidents. ARA *ex parte* comments at 1. Marine Communications, Inc. (MC) ech-

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[9] Several commenters, arguing for continuation of the current distress and safety system, indicate that U.S. vessels should continue to abide by the SOLAS Convention. We emphasize that the GMDSS requirements *are* the actual SOLAS Convention provisions. The 1988 Amendments to the SOLAS Convention implementing the GMDSS received acceptance on February 1, 1990, and enter into force on February 1, 1992. The SOLAS Convention simply allows the current system to remain in effect for existing ships until 1999.

[10] Many countries, such as Norway, Finland, and Canada, have already enacted regulations requiring their ships to convert to the GMDSS. Canada requires their existing ships to meet GMDSS requirements by 1995, rather than the permitted international deadline of 1999.

[11] Because the United States took reservations on the revisions to Radio Regulations, Articles 55 and 56, which set forth the radio operator certificates, we proposed qualifications based on the Radio Regulations' "operator certificates" rather than the "electronics certificates" (*i.e.*, the General Operator's and Restricted Operator's Certificates versus the First or Second Class Radio Electronic Certificates). *See Notice* at para. 39-40.

[12] Generally, radio officers have the specialized skills necessary to operate manual Morse code radiotelegraph equipment while radio operators have the general knowledge to operate simpler radio equipment, such as radiotelephone (voice), NBDP, and facsimile. Under the Communications Act, ships equipped with radiotelegraphy installations must carry radio officers. Both radio officers and radio operators are tested and licensed by the Commission. Radio officers, when employed to operate radiotelegraph equipment on compulsory ships, are also licensed by the Coast Guard.

[13] Several commenters identified themselves as radio officers or former radio officers. Other individuals presenting similar views did not identify their background. All noted that their comments were prompted by a desire to improve maritime safety and not for individual gain. Collectively, we will be refer to them as "individual radio officers."

oes this concern and claims that communications will become secondary to other duties, such as fire fighting, etc., during emergency situations. MC comments at 36. Several commenters refer to a number of emergency and distress occurrences aboard merchant vessels, arguing that the GMDSS will be less safe than the current system if ships are allowed to sail without radio officers. *See, e.g.*, comments of Russell, Phelps, and ARA (regarding a fire aboard M/V *Green Lake* in 1989, where a distress message sent via satellite went unanswered). Finally, ARA argues that we failed to consider the evolving role of the RO/REO as an equipment maintainer and the need for qualified electronics experts on ships which increasingly rely on computerized equipment for navigation, propulsion, and communications systems. ARA comments at 29.

15. The Coast Guard, the Radio Technical Commission for Maritime Services (RTCM), the American Institute for Merchant Shipping (AIMS), and seven others strongly support implementation of the GMDSS in the United States and urge that we allow all three methods of maintenance permitted by IMO. They argue that an individual certified in radio operations is sufficient unless the at-sea maintenance option is elected. AIMS states that the multiple operator concept of the GMDSS is superior to the present reliance on a single individual. AIMS comments at 3. It notes that, according to the proposed rules, a certified individual must be available to act as a dedicated communications operator during cases of distress.[14] *See, Notice*, § 80.1073(c). AIMS also disagrees with the view that radio officers are capable of making all shipboard repairs, noting that because of the variety of radio equipment aboard GMDSS ships, an at-sea maintainer could not be expected to perform the in-depth trouble shooting needed in repairing all pieces of GMDSS radio equipment. AIMS comments at 7-8. AIMS states that duplication of equipment is "by far the preferred alternative." AIMS comments at 2. In addition to being the preferred "spare part" for on-board maintenance, duplication provides immediate backup communications. AIMS supports shore-based maintenance also, noting that it provides specially-trained technicians, a wide range of spare parts, and the replacement of equipment. *See* AIMS comments at 2. In reply to the M/V *Green Lake* incident, the Coast Guard indicates that the *Green Lake's* distress message did not go unanswered but was forwarded to the Japanese Maritime Safety Agency, which was the responsible RCC for that area. The Coast Guard argues that although the distress message should have been acknowledged, the incident does not indicate that the existing system is better than the GMDSS. The Exxon Communications Company (Exxon) denies that radio officers would have made any difference in the incidents cited regarding Exxon ships, stating that the two situations cited aboard its vessels were problems in the engine room which were handled by electricians or engine room engineers, not radio officers. *See* Exxon comments at 4.

(1) Radio personnel and maintenance options aboard GMDSS ships

16. The comments in support of the GMDSS state that a qualified radio operator who would be dedicated to radiocommunications in cases of distress is sufficient for communications aboard GMDSS ships. They further argue that all three maintenance methods are viable, that this position was unanimously agreed upon by the international maritime community, and that we should not alter this approach. The comments in opposition state that radio officers are critical to the safe operation of oceangoing ships. They argue that radio officers are needed to perform electronics maintenance and to ensure the availability of qualified radio operators during distress situations.

17. We are not persuaded by the comments to deviate from the GMDSS requirements prescribed by the SOLAS Convention.[15] First, radio officers are not needed aboard GMDSS ships for manual Morse code telegraphy operations and watchkeeping requirements. GMDSS ships have alternate means of alerting and are not required to have Morse code telegraphy equipment. Second, we disagree that radio officers are necessary to ensure that qualified operators are available for communications during a distress situation. A licensed GMDSS radio operator must demonstrate knowledge of the operation of GMDSS equipment and the emergency procedures for distress communications. We examined the comments regarding at-sea emergencies. In situations like those described, a GMDSS radio operator would be capable of communicating with other ships and shore-based RCCs. Further, under the proposed requirements, a GMDSS-qualified radio operator must be designated to act as a dedicated communications operator in cases of distress. To ensure that this person is available for this duty, we agree with the Coast Guard's proposal that the designated emergency GMDSS operator, and a backup, be posted as part of the ship station bill.[16] Designating a backup will enhance safety by providing for more than one qualified radio operator on GMDSS ships. We have also included in the rules RTCM's suggestions that clarify the radio operators' responsibilities. *See* RTCM comments at 29-30. Finally, we disagree with the argument that we failed to recognize the evolving role of the radio officer as a maintainer of radio electronics equipment. As part of our proposal we outlined various options for radio maintenance including qualifications for at-sea radio maintainers, which we will now discuss.

18. The crux of the maintenance issue is whether at-sea maintenance should be mandatory rather than optional. We conclude that it need not be mandatory to ensure the availability of radiocommunications during a distress situation. At-sea maintenance is not the only means to ensure maritime safety under the GMDSS provisions. Duplication of equipment and shore-based maintenance are at least as viable as, if not more viable than, at-sea main-

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[14] The Coast Guard proposes that vessels must have a plan indicating who would be designated responsible for communications in an emergency (and who would be designated as backup), that the designated persons are properly certified and trained, and what other duties, if any, these persons would have during an emergency. *See* Coast Guard reply comments at 5.

[15] Although some comments refer to RO/REOs, there is no requirement in the SOLAS Convention, the Communications Act, or the Commission's Rules for ships to carry REOs. Articles 55 and 56 of the ITU Radio Regulations, to which the United States took reservations, refers to personnel holding First or Second Class Radio Electronics Certificates, not REOs.

[16] We note that the rules indicate that during a distress the radio operator function is primary and must be attended to before any additional duties. We see no reason to require delineation on the ship station bill of duties not related to radiocommunications. Delineation of their other duties is acceptable but not required by our rules.

tenance.[17] All GMDSS ships must have two pieces of equipment using two separate communications systems for ship-to-shore alerting, but those ships using the duplication option must have at least three pieces of equipment for ship-to-shore alerting. Thus, duplication of equipment greatly enhances safety of life at sea. Further, ships sailing in sea areas A3 and A4 (*i.e.*, most subject U.S. vessels) cannot rely on duplication alone but must use either shore-based or at-sea maintenance also. Although some commenters criticize shore-based maintenance, we believe it is a viable option. The extensive use of integrated circuitry and microprocessors in modern communication equipment makes shore-based maintenance a natural complement to duplication or at-sea maintenance. Lack of extensive technical knowledge and limited spare parts and test equipment restricts at-sea maintenance from ensuring communications during distress situations. At-sea maintenance, however, should not be excluded as a maintenance option. We are adopting the flexible approach to maintenance adopted by IMO. We are also adopting the IMO Guidelines for Maintenance into the Commission's Rules.[18] These guidelines have been fully considered internationally, approved by the IMO, and supported by comments. Although some commenters argue that ships would leave port before repairs were completed, we emphasize that this would be a violation of the rules. The rules state that a ship must be capable of performing all distress and safety communications throughout its entire voyage. Additionally, we are incorporating changes to the proposed rules to clarify the GMDSS radio maintenance requirements for U.S. vessels.[19]

19. For these reasons, we are adopting rules requiring GMDSS ships to carry a GMDSS-qualified radio operator having primary responsibility for radiocommunications during distress situations. Additionally, as proposed by the Coast Guard, each ship must also carry a second GMDSS-qualified radio operator for backup purposes. We conclude that while manual Morse code trained radio officers have played a critical role in the safe resolution of distress situations in the past, the GMDSS will be more effective in communicating in distress situations than the current system, and the features of the GMDSS eliminate the need for manual Morse code equipment, and thus the carriage of radio officers. The GMDSS system still requires the carriage of a licensed, proficient radio operator. We also find adoption of three maintenance options to be in the public interest, because this will allow U.S. vessels the same flexibility provided by the international community while ensuring that ships can communicate during distress situations.[20] For ships using either duplication or shore-based maintenance options, a certified GMDSS radio operator is sufficient for safety communications requirements. In accordance with IMO provisions, the maintainer could be a person other than the radio operator, and neither the maintainer nor the radio operator need be a radio officer.[21]

(2) Certification of radio operators and at-sea maintainers

20. In the *Notice*, we proposed that the Commission test and issue a GMDSS endorsement which would be affixed to the existing First or Second Class Radiotelegraph Operator's Certificate (T-1 or T-2), General Radiotelephone Operator License (G), or Marine Radio Operator Permit (MP) after an operator demonstrated satisfactory knowledge of GMDSS practices and procedures. We requested comments on whether T-1 or T-2 radio operators who have six month endorsements may be grandfathered or

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[17] Duplication of equipment is not equivalent to complete redundancy. There is no requirement that ships carry "two sets of everything." The IMO has adopted guidelines that set out the additional radio installations required under the duplication of equipment option. *See* IMO Assembly Resolution on Radio Maintenance Guidelines for the Global Maritime Distress and Safety System related to Sea Areas A3 and A4 (hereafter "IMO Guidelines for Maintenance"). These guidelines ensure that ships using duplication of equipment have a second radio to replace each basic radio for all functions critical to distress and safety communications.

[18] We are not adopting, however, the IMO provision that states "for ships operating in sea area A4 *only occasionally* and having originally installed an MF/HF radio installation, the additional MF/HF radio installation may be substituted by an INMARSAT-SES radio installation." *See* IMO Guidelines for Maintenance, Section 2.2 of Annex (emphasis added). Although permitted by the IMO, we believe that this provision does not adequately ensure backup communications, because INMARSAT does not cover the sea area A4.

[19] As suggested by comments, the rules clarify the GMDSS radio operators' duties and specify that the equipment must be operational before the ship leaves port. They also require that GMDSS ships carry adequate spare parts and copies of the IMO Master Plan. *See* comments of RTCM at 28 and 44 and Coast Guard at 9. We have not incorporated the Coast Guard's suggestion that ships electing duplication of equipment must carry HF equipment as the replacement for INMARSAT-SES, and INMARSAT-SES as the replacement for HF equipment. The Coast Guard states that this would eliminate dependence upon one system. Coast Guard comments at 4. (IMO allows for this substitution of equipment but does not require it.) We find that the Coast Guard has not provided sufficient justification to impose this stringent requirement on vessels using the duplication of equipment option. It exceeds IMO requirements and limits flexibility for ships choosing the duplication of equipment option. It also necessitates that ships carry additional tools, spare parts, and technical information for maintaining differing sets of equipment. Finally, if reliance on INMARSAT or HF systems alone is adequate for ships choosing on-board or shore-based maintenance options, then reliance on either INMARSAT or HF systems should be sufficient for ships choosing duplication of equipment. Thus, we will permit the substitution of INMARSAT and HF equipment as allowed by IMO for ships choosing duplication of equipment, but we will not make it mandatory.

[20] Although some commenters, most notably ARA, argue that a "general electronics technician" is needed aboard ocean-going vessels for the joint purpose of maintaining radio and navigational equipment, we conclude that the three maintenance options provided by the IMO satisfactorily address radiocommunication requirements. Whether ships need additional personnel for the maintenance of non-radiocommunications equipment, such as navigational equipment, is not at issue here. Maintenance of electronic equipment, other than radiocommunication equipment, is a matter under the jurisdiction of the Coast Guard.

[21] We note that ships that carry radiotelegraphy equipment (*i.e.*, passenger ships of twelve persons or more and cargo ships of 1600 tons gross tonnage and over) must continue to carry radio officers in accordance with the Communications Act. Until the Communications Act is amended, this requirement remains in force. The designated GMDSS radio operator for emergency communications may be the radio officer or a different person who has a GMDSS license issued by the Commission.

whether they must take the GMDSS examination. We further requested comments on whether a certificate should be required for the at-sea maintainer, what standards should be enacted, and who should issue the certificate. *See Notice* at paras. 40-41.

21. *Radio operators:* All commenters agree with our proposal to test and license radio operators on board GMDSS ships. RTCM and the Coast Guard recommend, however, that the MP be deleted from the list of licenses allowed a GMDSS endorsement. Comments of RTCM at 27, Coast Guard at 6. The National Maritime Electronics Association (NMEA), AIMS, and Reno also support this position. In their opinion, the MP license is not adequate to ensure the skill level required for GMDSS operations. Comments of AIMS at 3, Reno at 14. In response to these concerns, we are adopting a separate GMDSS license, called the GMDSS Radio Operator's License, instead of a GMDSS endorsement. This will provide the desired separation between the GMDSS radio operators and maintainers, as discussed earlier.[22] As proposed in the *Notice*, the GMDSS radio operator requirements will be based on "the international General Radio Operator's Certificate, as specified in Article 55 of the ITU Radio Regulations.[23] The qualifications for this certificate were adopted by the ITU and the IMO after extensive review by the international community. They include requirements such as knowledge of basic operational practices, emergency procedures, duplication principles, watch requirements, and antenna adjustments. Thus, we find that the GMDSS Radio Operator's License ensures that the GMDSS radio operator is qualified for GMDSS distress and safety radiocommunications, including performing certain equipment adjustments.

22. The comments on grandfathering varied. NMEA and AIMS state that T-1 and T-2 operators should not be grandfathered. NMEA at 2 and AIMS at 3-4. Russell suggests that persons holding T-1 and T-2 certificates with six month endorsements, or G licenses and six months experience, be issued the GMDSS endorsement when the steamship company advises us in writing that the person has demonstrated the ability to maintain GMDSS, radar, and navigation equipment at sea. Under our current rules, radio operator licenses are valid for five years and are renewable without further examination. 47 C.F.R. § 13.28. Consequently, if we were to grandfather existing radio operators, they could operate indefinitely without demonstrating their knowledge of GMDSS procedures.[24] We conclude, therefore, that to ensure safety aboard GMDSS ships, grandfathering of existing radio operators is not appropriate. GMDSS radio operators must be thoroughly familiar with the newly adopted GMDSS requirements to ensure safety. Thus, all persons wishing to become GMDSS radio operators will have to take a new examination for the GMDSS Radio Operator's License.[25]

23. *At-sea maintainers:* All commenters support licensing of the at-sea radio maintainer. All urge us to establish comprehensive standards to ensure the safety of life, property, and the environment. ARA urges that we "set standards at a level that guarantees that the newly-licensed RO/REO can effectively maintain and repair electronic equipment to the component level." ARA comments at 25. The Coast Guard and RTCM state that the at-sea maintainer could be certified using criteria developed by the IMO. RTCM comments at 45. NMEA suggests that we establish an advisory panel, composed of representatives from training institutions, to produce a unified test and standard for both on-shore and at-sea maintainers. NMEA comments at 3. AIMS states that we could recognize authorized programs run by companies, unions, or private schools. AIMS comments at 3-4. Lundeberg states that NMEA should be considered as a neutral party to administer the maintainer designation. Lundeberg comments at 5.

24. We agree that the at-sea radio maintainer should be licensed. (This would be a separate license from the radio operator license.) Ships using at-sea maintenance, and only those ships choosing at-sea maintenance, will be required to carry a licensed GMDSS radio maintainer. The T-1, T-2, and G licenses will suffice for the GMDSS radio maintainer because their examinations currently include knowledge of technical matters applicable to adjustments and repair of radio equipment generally (*see* 47 C.F.R. § 80.167). As suggested by many comments, however, we believe an outside entity or entities could administer the program and possibly issue the license for the at-sea GMDSS radio maintainer. Consequently, we encourage the industry to form a committee to review the qualifications for the at-sea GMDSS radio maintainer and examine the licensing procedures for this maintainer. To be effective, the industry should focus on radio equipment particular to the GMDSS and matters related to radio maintenance at sea.[26] Until further recommendations are made, we will recognize the existing T-1, T-2, or G licenses for the at-sea GMDSS radio maintainer (*see* Appendix E, § 80.1074).

25. For these reasons, we are requiring that a GMDSS ship carry two radio operators (a primary and a backup) each holding GMDSS Radio Operator's Licenses and, if

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[22] If we exclude the MP license as suggested by commenters, GMDSS ships would have to carry radio operators holding GMDSS-endorsed T-1, T-2, or G licenses, which also qualifies them to repair the radio equipment (*see* 47 C.F.R. § 80.167). This is not acceptable because, as concluded earlier, we wish to separate the requirements for radio operators and maintainers on-board GMDSS ships. Therefore, we will adopt a new license for GMDSS radio operators rather than adding an endorsement to existing licenses.

[23] *See* Radio Regulations, Article 55, and IMO Assembly Resolution on Training for Radio Personnel (GMDSS).

[24] Our concern is that the radio operators know the GMDSS procedural requirements for distress and safety situations. We expect that most radio officers and operators already know how to operate the GMDSS equipment technically because it is simple to use and many ships already carry much of the GMDSS-required equipment voluntarily.

[25] We note that this requirement is for compulsory ships. AIMS, NMEA, and Lundeberg argued that voluntarily-equipped GMDSS ships also have properly trained radio operators. *See* comments of AIMS at 2, NMEA at 3, and Lundeberg at 4. We agree, and we will revise our MP examination to include GMDSS-related questions prior to February 1, 1995, the effective date of the GMDSS rules for new ships. Similarly, we will revise the requirements for the Restricted Radio Operator's Permit (RP) to reflect GMDSS operations prior to February 1, 1995.

[26] *See* IMO Assembly Resolution on Training for Radio Personnel (GMDSS), Annex 5.

the at-sea maintenance option is used, one GMDSS radio maintainer holding a T-1, T-2, or G license.[27] The GMDSS radio operator can be the radio officer required by the Communications Act or any other licensed member of the crew. The GMDSS radio maintainer can be any crew member licensed by the Commission for that purpose. The GMDSS radio maintainer may be one of the GMDSS radio operators or a different person. Further rule amendments regarding the at-sea GMDSS radio maintainer will be considered later, upon recommendations from an industry group. In our view, this approach fits with the international requirement to provide flexibility for radio-equipment maintenance while ensuring that every ship carries personnel qualified for distress and safety radiocommunications purposes.

C. Operational and Technical Issues

(1) Maritime safety information (MSI)

26. *NAVTEX:* To ensure receipt of MSI broadcasts, such as weather warnings and emergency messages, via the NAVTEX system, we expanded on IMO provisions and proposed that *all* U.S. compulsory ships carry a NAVTEX receiver. We indicated in the *Notice* that IMO requires a NAVTEX receiver *only if* the ship sails in NAVTEX service areas. We explained that we were proposing a more stringent standard than IMO, noting that most U.S. vessels would sail in NAVTEX areas because the Coast Guard has established extensive NAVTEX service areas along the United States coastline. *Notice* at para. 28. MC opposes this requirement and argues that there are significant gaps in NAVTEX coverage. RTCM acknowledges that there are gaps in NAVTEX coverage, such as the entrance to New York Harbor, but does not oppose the proposal. RTCM comments at 4. MC also claims that there are other existing maritime information systems that are superior to NAVTEX, such as the Defense Mapping Agency Hydrographic/Topographic Center's "Automated Notice to Mariners System" (ANMS). MC suggests that we should eliminate the NAVTEX requirement or at minimum make it optional. MC comments at 63. We disagree with MC concerning the utility of the NAVTEX system. The NAVTEX system is an established system that will be expanded under the GMDSS to provide the primary means of disseminating maritime safety information. There are other warning systems available, but they do not serve the same purpose as the NAVTEX system. We believe that a clear requirement for U.S. vessels to carry NAVTEX receivers would be beneficial even if it is more stringent than IMO's requirement. We prefer to treat the rare case where a ship never sails into a NAVTEX service area on a case-by-case basis rather than making NAVTEX receivers optional. Therefore, we conclude that GMDSS ships in the United States must carry a NAVTEX receiver as of August 1, 1991, as proposed.[28]

27. *INMARSAT Enhanced Group Calling (EGC):* We also proposed that most GMDSS ships, which sail outside NAVTEX coverage areas but within the INMARSAT coverage area, carry equipment capable of receiving maritime safety information from the EGC feature of the INMARSAT system. *Notice* § 80.1085(a)(5). RTCM and the Communications Satellite Corporation (COMSAT) note that there are three group calling systems available through INMARSAT and suggest that the rules specify the EGC "SafetyNET" system.[29] RTCM comments at 4. We have made this change noting that the SafetyNET system is required for GMDSS ships by IMO. RTCM further proposes that we require GMDSS ships to carry *dedicated* INMARSAT EGC receivers separate from the ship earth stations, as unscheduled emergency broadcasts or distress alert relays could be missed if the ship earth station is being used for other communications at the time the maritime safety information is transmitted. RTCM comments at 6. The need for a dedicated INMARSAT EGC receiver was discussed extensively by the international community. The IMO decided that this would be an unnecessary burden because urgent messages could be sent directly to the appropriate ships as call announcements. The INMARSAT system has established procedures to assure receipt of call announcements during times when the ship earth station is busy, such as holding call announcements in a queue for when the ship's satellite earth station is not in use. *See* INMARSAT-C System Definition Manual, Release 1.3. 1. (1991). Thus, emergency MSI broadcasts could be sent directly if the emergency warranted then be added to the next scheduled broadcast. The GMDSS watch requirements require that ships maintain a radio watch for scheduled MSI broadcasts appropriate to its sea area. *See* Appendix E. § 80.1123(b). We therefore see no need to require U.S. ships to carry a dedicated INMARSAT EGC receiver, which exceeds the IMO provisions.[30]

(2) Equipment standards and authorization

28. *Performance standards:* Russell and MC comment that the GMDSS equipment requirements should contain specifications for reliable operation under the types of environmental conditions likely to be encountered at sea. MC comments at 28. This concern is unfounded because the IMO and CCIR standards adopted today address this point. *See* Appendix E. § 80.1101(a). Included in these standards is a "General Standard for all Shipboard Radio Equipment" that requires GMDSS equipment to be capable of continuous operation under the various conditions of vibration, humidity and temperature likely to be experienced on ships (*see* IMO COM 36/21, Annex 12).

29. In the *Notice*, we proposed that all GMDSS equipment be type accepted by the Commission except equipment used in the INMARSAT system (*e.g.*, INMARSAT-A ship earth stations), which must be notified by the Com-

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[27] We note that the six month service endorsement listed in 47 C.F.R. § 13.2(c) is not required.

[28] We further note that, although MC stated that there are no mandatory monitoring or watchkeeping requirements, the rules proposed and adopted today require a radio watch for NAVTEX MSI broadcasts. *See* Appendix E, § 80.1123.

[29] The three systems are: the INMARSAT-A group call system; the EGC "FleetNET" system; and the EGC "SafetyNET" system. The EGC "SafetyNET" system has been identified by IMO to provide maritime safety information for the GMDSS.

[30] We note that ships equipped with INMARSAT-A terminals do not include the EGC feature, however, and they will have to add either INMARSAT-C systems or separate EGC receivers to receive the SafetyNET broadcasts.

mission for use in the GMDSS system. [31] *Notice* at para. 31. All comments supported our type acceptance proposal. Regarding notification of INMARSAT equipment, however, RTCM suggests that we adopt two procedures for INMARSAT equipment: (1) notification for equipment that is approved by INMARSAT "specifically for the GMDSS" including all peripheral equipment, such as processors and printers; and (2) type acceptance for any equipment that is not approved by INMARSAT "specifically for GMDSS" and our acceptance be granted only for the specific equipment and peripheral configurations represented in the application. We have reviewed this matter and do not find it necessary to adopt two procedures for INMARSAT equipment. In our view, two procedures (*i.e.*, notification and type acceptance for the same piece of INMARSAT equipment) would be confusing for the Commission, manufacturers, and ship owners. When INMARSAT approves equipment it issues certificates, called Type Approval Particulars (TAP), for the equipment and any peripherals essential for its operation. Thus, INMARSAT's approval provides the information necessary to determine if the equipment meets GMDSS specifications and what peripherals are essential. We therefore will require INMARSAT equipment to be approved by INMARSAT then notified by the Commission. Manufacturers should submit the INMARSAT TAP certificates to the Commission and certify that its equipment, including peripherals, meet the IMO and CCIR performance standards for GMDSS equipment. This should satisfy RTCM's concern that all INMARSAT equipment including peripherals meet GMDSS requirements.

30. After consideration of these comments, we are adopting the type acceptance and notification procedures as proposed. All GMDSS equipment must be type accepted by the Commission except equipment used in the INMARSAT system, which must be notified by the Commission for use in the GMDSS system. The IMO and CCIR standards are incorporated by reference. GMDSS equipment other than INMARSAT equipment will be type accepted based on the representations and test data submitted by the applicant. For INMARSAT equipment, applicants must attest that the equipment meets the IMO and CCIR performance standards and include a copy of the INMARSAT TAP certificate with the notification application. Finally, as proposed, GMDSS equipment need not be submitted unless specifically requested by the Commission.[32]

31. *Equipment labeling:* RTCM recommends that we incorporate in the rules specific labeling requirements for GMDSS equipment so that the public can easily identify equipment authorized for GMDSS use. RTCM claims that there are many models of equipment on the market that may provide capabilities similar to GMDSS requirements but that may not meet the GMDSS standards. Labeling would identify the equipment that meets GMDSS standards. *See* RTCM comments at 22-23. We agree that labeling of GMDSS approved equipment would be helpful to the public. Therefore, we are incorporating a labeling requirement for type accepted and notified GMDSS equipment.[33]

(3) INMARSAT ship earth stations

32. Several commenters note limitations of INMARSAT ship earth stations, including blocking of the line-of-sight path from the antenna to the satellite by ship structures and the potential inability of the antenna to operate if a ship is listing. Reno states that if a ship has lost its power or steering (an emergency situation), it cannot change course to correct blocking of the antenna. Reno comments at 3. The Coast Guard agrees that vessel listing could make an INMARSAT ship earth station inoperable in an emergency. It proposes that our inspection of shipboard emergency communications equipment include the location of INMARSAT antennas to ensure that masking is minimized. Coast Guard comments at 3. We recognize that listing of a ship could render an INMARSAT-A ship earth station inoperable. The GMDSS, however, provides alternate means of distress alerting by DSC or EPIRB. An inoperable ship earth station would hinder distress communications, but would not render distress alerting impossible. To minimize masking, we are including antenna siting as suggested by the Coast Guard as part of the ship inspection. The IMO Performance Standards provide guidelines for proper antenna siting to avoid masking.[34]

33. Lundeberg notes that some INMARSAT ship earth stations already in use on board ships may not meet the GMDSS standards and opposes the use of these terminals by ships after implementation of the GMDSS. We emphasize that INMARSAT equipment, like other GMDSS equipment, must be authorized by the Commission specifically for GMDSS use. Consequently, existing INMARSAT ship earth stations are not acceptable unless notification is granted by the Commission and a FCC

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[31] Type acceptance and notification are procedures by which we issue equipment authorizations. *See* 47 C.F.R. § 2.901. For type acceptance, the applicant makes measurements and submits certain representations and test data that demonstrate compliance with the technical standards. For notification, the applicant makes measurements and attests that the measurements demonstrate compliance with the technical standards. For notification, test data are not submitted unless specifically requested by the Commission. For both type acceptance and notification, an identification number (FCC ID#) is issued by the Commission.

[32] In the *Notice*, we proposed that GMDSS equipment be exempt from the current rule that applicants for type acceptance of compulsory equipment submit a working unit. *Notice* at para. 31, 47 C.F.R. § 80.203(c). We received no comments concerning this point.

[33] The label does not denote authorization. The only way to verify that the equipment meets GMDSS performance standards is for interested parties to check that the FCC ID# on the equipment is included in the latest FCC Radio Equipment List *and* that it is identified on the list as authorized for GMDSS use. Information on type acceptance and notification of GMDSS equipment can be accessed through the FCC's Office of Engineering and Technology's Public Access Link (PAL) system, 24 hours a day, seven days a week, on (301) 725-1072. For convenience, we will also publish an additional equipment list of GMDSS authorized equipment after sufficient equipment has been authorized for GMDSS use. When published, copies of this list can be obtained from the Commission's duplicating contractor. Prior to publication of this list (or for the latest authorizations), information on GMDSS equipment is available only through the PAL system.

[34] *See* IMO Resolutions A.608(15) and A.663(16), which have been incorporated by reference into the Rules for antenna siting of INMARSAT-A and INMARSAT-C ship earth stations.

ID# is issued. For existing INMARSAT equipment that meets the GMDSS standards but does not have the requisite FCC ID# and GMDSS label attached, the manufacturer's application for notification may indicate that the FCC ID# and GMDSS label will be attached "in the field" by the manufacturer's representatives. (The manufacturer's statement is in addition to the INMARSAT approval certificate and affidavit that the equipment meets GMDSS standards.) After authorization is granted, the manufacturer must add the FCC ID# and GMDSS labels to existing equipment. The actual placement of these labels must be done by the manufacturer or a manufacturer authorized representative. *All* equipment used by GMDSS ships to fulfill GMDSS requirements, including INMARSAT ship earth stations, must have appropriate FCC ID# and GMDSS labels and appear on the FCC Radio Equipment List with a notation that it is authorized for GMDSS use.

(4) Other satellite systems

34. The *Notice* referred to INMARSAT as the primary satellite system used for GMDSS communications.[35] The American Mobile Satellite Corporation (AMSC) notes that other satellite systems may obtain IMO approval, and suggests that language in the proposed rules which refers to INMARSAT be modified to refer to both INMARSAT and any other IMO approved satellite system. The rules, however, are written with the intent of enacting IMO regulations regarding the GMDSS. Referring to other IMO approved satellite systems implies that there are other IMO authorized systems. Currently there are not. Should another satellite system receives IMO approval, we will consider adding that system to the rules.

(5) Terrestrial Digital Selective Calling (DSC)

35. RTCM recommends that we adopt several additional requirements for DSC receivers: a dedicated, non-scanning receiver for monitoring VHF DSC Channel 70; a scanning receiver for monitoring MF and HF DSC channels, limited to DSC channels; and position updating in DSC equipment every four hours. RTCM comments at 31-32. Russell recommends that we permit scanning of six or more HF DSC channels. Russell comments at 4. In response to these recommendations, we will amend § 80.1085(a)(2) of the rules to require monitoring of VHF DSC Channel 70 with a dedicated, non-scanning receiver. VHF Channel 70 will become an important safety calling channel under the GMDSS and we agree that a dedicated receiver is reasonable. We will also amend the watchkeeping requirements in § 80.1123(a)(3) to permit scanning of up to six MF/HF DSC distress and safety channels. The International Radio Consultative Committee (CCIR) indicates that a single receiver should scan no more than six channels. *See* CCIR Report 908-1. Finally, we will require updating of the ship's position at least every four hours either manually or automatically through a navigation receiver.[36] This information can be easily entered into the DSC equipment and periodic updating will provide an approximate ship's position if an emergency prohibits entry at the time of distress.

(6) Survival craft radios, EPIRBs, and SARTs

36. The Coast Guard proposes that it, rather than the Commission, should be the governing agency for carriage requirements for survival craft two-way portable radios, EPIRBs, and SARTs. Coast Guard comments at 6. RTCM and NMEA support this position and claim that two sets of rules, the Coast Guard's and the Commission's, will make for an awkward and inconsistent regulatory structure. We disagree with the commenters on this matter. In the case of the GMDSS provisions, the requirements cannot easily be divided between ship and survival craft requirements. The two-way portable radios are part of the survival craft requirements, the EPIRBs are ship requirements, and the SARTs are both survival craft and ship requirements. Thus, we believe that it will make the GMDSS carriage requirements easier to understand and follow if all GMDSS requirements can be found in one set of federal regulations, *i.e.*, the Commission's Rules. Moreover, the Communications Act, 47 U.S.C. § 357, requires the Commission to ensure that survival craft radio equipment is carried in accordance with international treaties. Thus, we have a statutory responsibility to address these requirements.

37. In the *Notice*, we proposed that all compulsory ships be required to carry EPIRBs by August 1, 1993. As permitted by IMO, we proposed that the requisite EPIRB be the 406 MHz EPIRB, 1.6 GHz EPIRB, or VHF Channel 70 EPIRB.[37] We noted in the *Notice* that at present only the 406 MHz EPIRB is operational. The 1.6 GHz EPIRB is in pre-operational testing and the VHF Channel 70 EPIRB has not been developed. We stated that we proposed all three EPIRBs regardless of their development so that our rules would provide for all options permitted by IMO. This would have allowed all three EPIRBs to be used once they became operational without the delay entailed by further rule making.

38. The Coast Guard, RTCM, and several others suggested that we postpone the use of the 1.6 GHz and VHF Channel 70 EPIRBs for U.S. vessels to a later date. RTCM recommends that equipment standards and shore facilities should be reviewed before we permit the use of these EPIRBs in the United States. RTCM comments at 16. Because of the critical function of the EPIRBs for alerting, we agree that a thorough review of the equipment standards and shore facilities would be beneficial prior to any action permitting the use of these EPIRBs in the United States. Thus, we have deleted the optional use of 1.6 GHz and VHF Channel 70 EPIRBs from the rules pending further review. Although we are not authorizing the use of the 1.6 GHz and VHF Channel 70 EPIRBs at this time, we continue to support their use in the GMDSS.

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[35] The COSPAS-SARSAT satellite system is used for alerting and locating only.

[36] As noted by Lundeburg and RTCM, the required DSC equipment would not automatically include the nature of the distress and the time and position of the ship transmitting the call. Automatic transmission of this information is possible, however, if additional non-mandatory equipment is added.

[37] The 406 MHz EPIRB uses the COSPAS-SARSAT satellite system and the 1.6 GHz EPIRB uses the INMARSAT satellite system.

39. Regarding 406 MHz EPIRBs, the Coast Guard, RTCM, and Lundeberg, recommend that 406 MHz EPIRBs used on U.S. vessels be required to meet our present regulations in addition to IMO and CCIR requirements. Comments of RTCM at 41, Coast Guard at 8, and Lundeberg at 3. Our present regulations require that 406 MHz EPIRBs contain homing beacons operating on 121.5 MHz as an integral part of the equipment. 47 C.F.R. § 80.1061. The IMO and CCIR requirements for the 406 MHz EPIRB do not include a 121.5 MHz homing capability. In the *Notice*, we proposed that all GMDSS equipment including 406 MHz EPIRBs meet only the IMO Performance Standards and the CCIR Recommendations rather than our current rules. *Notice* § 80.1101. Thus, our proposal did not include the additional standards for 406 MHz EPIRBs currently prescribed in our rules. Upon review, we agree with the commenters that the present rules incorporate a number of beneficial requirements, such as the 121.5 MHz homing beacon, strobe lights, and test procedures to ensure equipment reliability.[38] Therefore, the GMDSS requirements for 406 MHz EPIRBs refer to the IMO and CCIR standards as well as the current regulations in 47 C.F.R. § 80.1061.[39]

40. In accordance with GMDSS provisions, we proposed that every ship subject to the GMDSS carriage requirements carry a 9 GHz radar transponder (SART). Lundeberg and RTCM recommend that in addition to the SART, a 121.5 MHz homing transmitter capability be required for all U.S. vessels. Lundeberg comments at 3, RTCM comments at 18. MC also proposes that the Commission require 121.5 MHz and 243.0 MHz transceivers for survival craft to allow bi-directional communications between survival craft and aircraft. MC reply comments at 4. Because we are requiring all GMDSS ships to equip with 406 MHz EPIRBs which include 121.5 MHz homing beacons, there is no need for a separate 121.5 MHz homing transmitter. While we understand the desirability of having bidirectional communications on 121.5 MHz and 243 MHz as an aid in aircraft rescue operations, this exceeds the IMO provisions and we are not convinced that it is necessary at this time. The 406 EPIRBs can be programmed with location information to aid in search and rescue efforts. Thus, we will associate consideration of any further 121.5/243.0 MHz requirements with any future review of the 1.6 GHz and VHF Channel 70 EPIRBs discussed above.

(7) Reserve power and antenna tracking requirements

41. We received comments concerning requirements for reserve power for distress communications, and for maintaining antenna tracking system input in emergency situations. Torgerson states that the one hour requirement for reserve power is not enough and notes that the present requirement for reserve power is six hours. He claims that a realistic reserve power requirement would be 12 hours. MC has similar concerns about the reserve power supply. Additionally, MC is troubled about insuring adequate power to the INMARSAT ship earth stations. It suggests that external sources of power for INMARSAT terminals should be based on a method to ensure that terminals have adequate auxiliary power supply filtering to protect the terminal's computer circuits from the effects of unfiltered DC square wave components in the power supply source voltage. Russell recommends that communications satellite equipment be capable of being operated from battery power and that the equipment not rely on electrical inputs from the ship's GYRO compass because these signals may not exist in emergencies. In reply, the Coast Guard recommends that our inspection of vessels include ensuring that gyro information necessary to maintain satellite tracking be maintained in an emergency, *e.g.*, during loss of ship's power. *See* comments of Torgerson at 4, MC at 28, and Russell at 3, and Coast Guard reply comments at 3.

42. In the *Notice*, we proposed that all ships have *reserve* sources of energy to supply power for distress and safety communications for one hour. In the event of failure of the ship's main power source, this one hour of reserve power is intended to be used after the exhaustion of the *emergency* sources of electrical power. The emergency power requirement for ships constructed after February 1, 1995, is 18 hours for cargo ships of 500 tons gross tonnage and 36 hours for passenger ships irrespective of size. *See* SOLAS Convention, Chapter II-1, Regulations 42, 43. We have reviewed this issue and are adding a further requirement, in accordance with the GMDSS provisions, for six hours of reserve power for ships that do not meet the 18 and 36 hour emergency power requirements. *See*, 1988 Amendments, Chapter IV, Regulation 13. This change along with the emergency power requirements should provide satisfactory backup power for emergency situations. Regarding MC's comment concerning auxiliary power supply filtering, the equipment standards for ship earth stations require that any change in power supply or momentary interruption of electrical energy should not render the INMARSAT terminal "inoperative or require the equipment to be re-initialized." IMO Resolution A. 608(15), Annex 5. This requirement also states that it should "be possible to operate the ship earth station and all equipment necessary for its normal functioning, including the antenna tracking system, from an alternative source of energy." Further our ship inspections for GMDSS ships will include checking that tracking information can be maintained during a

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[38] Our present rules require that 406 MHz EPIRBs meet the technical and performance standards contained in the RTCM document titled "RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs)" dated July 31, 1987. 47 C.F.R. § 80.1061(a).

[39] For 406 MHz EPIRBs to be used on GMDSS ships they must meet the GMDSS IMO/CCIR standards in addition to the present requirements for 406 MHz EPIRBs. We believe most existing 406 MHz EPIRBs do meet these GMDSS IMO/CCIR standards already. Consequently, rather than requiring existing 406 MHz EPIRBs to be type accepted again, we will allow the manufacturers to submit letters to the FCC's testing laboratory verifying that "unit, FCC ID #, meets the IMO Performance Standards and CCIR Recommendations for 406 MHz EPIRBs applicable to GMDSS as specified in 47 C.F.R. § 80.1101." We can then add the FCC ID# for these 406 MHz EPIRBs to the GMDSS approved equipment list. If desired, the manufacturer, or a manufacturer's authorized distributer, also may add the requisite GMDSS label. (See previous discussion concerning equipment labeling for existing equipment, at para. 31.) Regardless of whether the 406 MHz EPIRBs have GMDSS labels or not, they can be identified by checking the Commission's Equipment List for their FCC ID# *and* a note indicating acceptance for GMDSS use.

loss of the ship's main power. Therefore, a specific requirement concerning auxiliary power supply filtering is unnecessary.

(8) Watchkeeping requirements

43. In the *Notice*, we proposed that GMDSS ships maintain watches by DSC on the frequencies appropriate to its sea area, by satellite if equipped with a ship earth station and, until February 1, 1999, by radiotelephony on the existing distress frequencies 2182 kHz and 156.8 MHz (VHF Channel 16). *Notice* § 80.1123. Russell states that the communications link between GMDSS ships and small vessels will be lost after February 1, 1999, if we eliminate the radiotelephony watch requirement on 2182 kHz and VHF Channel 16. He argues that the absence of this requirement after February 1, 1999, will make it difficult for two passing vessels to communicate, and that small non-GMDSS ships with only short range VHF may be unable to contact a shore station with distress messages. He states that if GMDSS ships continue a watch on VHF Channel 16 or 2182 kHz, they may be able to receive the smaller ships' distress calls and come to their rescue. Russell comments at 2. Additionally, Russell, Torgerson, and Lundeberg note that 2182 kHz is relatively ineffective in tropical latitudes. Lundeberg suggests watchkeeping requirements on the 6 MHz or 8 MHz bands to supplement the 2182 kHz watch. Comments of Russell at 4, Torgerson at 2, and Lundeberg at 2. The Coast Guard, in its reply comments, encourages small craft to fit with DSC equipment and acknowledges that an extension of radiotelephony watchkeeping requirements may be necessary if DSC is not in common use by 1999. Coast Guard reply comments at 4.

44. Our proposal to eliminate the ship watch on 2182 kHz and VHF Channel 16 is in agreement with the international GMDSS provisions and anticipates a shift by all vessels to the DSC frequencies by 1999. Thus, ships equipped with DSC radios will be able to use DSC frequencies in lieu of 2182 kHz or VHF Channel 16 to communicate when passing and for distress communications. Because DSC calling is "direct dialing" for ships, it is an improvement over the current general calling on 2182 kHz and VHF Channel 16. We will follow the international provisions by adopting the 1999 deadline. Further, reliance on 2182 kHz will diminish after August 1, 1993, because all GMDSS ships are required to be equipped with a 406 MHz EPIRB for distress alerting by that date. Additionally, although the comments are correct that the effectiveness of 2182 kHz may be limited in the tropical regions, we decline to impose an additional watch requirement on the 6 MHz and 8 MHz bands, as this would entail additional equipment requirements and be a significant watchkeeping burden. For these reasons, we are reluctant to expand watchkeeping requirements from those imposed by international requirement. Thus, we are adopting the watchkeeping requirements as proposed. We will monitor the implementation of DSC equipment in small vessels and will review radiotelephony watch requirements if necessary.[40]

(9) Funding and charges for GMDSS communications

45. We proposed a requirement in the *Notice* that distress communications be carried free of charge. All commenters who addressed this point recommend that GMDSS communications should be governed by the provisions of the Communications Act and the joint decision of IMO and INMARSAT. *See* 47 U.S.C. § 357 and "Report and Recommendations of the Joint IMO/INMARSAT Meeting on Funding of Maritime Distress and Safety Communications" (FDSC 1/13). We agree and have incorporated these charging provisions into the rules. In the ship-to-shore direction no charges will be levied for distress alerts, search and rescue coordination communications, urgent navigational and meteorological danger reports, or medical assistance messages where a grave and imminent danger to life exists. Standard meteorological reports, ship reports and medical advice where a grave danger to life is not present may be charged to the addressees of the messages. FDSC 1/13, Annex 6 (1990). In the shore-to-ship direction, no charges will be levied for distress alerts, SAR coordination communications, or medical assistance messages relating to an imminent danger to life. The originators may be charged for meteorological forecasts, meteorological warnings, navigational warnings, routine medical advice, and other urgent messages.

IV. CONCLUSION

46. By these amendments, U.S. vessels will be brought into conformity with GMDSS provisions. As noted above, the GMDSS provisions are mandated by the SOLAS Convention, to which the United States is signatory. We find that the GMDSS offers significant advantages for marine safety that should not be delayed. Indeed, there are valid reasons, such as worldwide alerting, coordinated search and rescue operations, and dissemination of maritime safety information, to encourage implementation of the GMDSS as soon as possible. Rapid progress toward full implementation of the GMDSS is in the public interest. We will proceed with equipment authorization and licensing of GMDSS radio operators as quickly as possible. Until the Communications Act is amended, however, the rules adopted today must be viewed as an extension to the current safety system requirements. Consequently, U.S. compulsory ships that comply with the GMDSS provisions, which become mandatory in 1995 for new ships and in 1999 for existing ships, will be required to carry authorized GMDSS equipment and qualified GMDSS personnel plus existing radiotelegraph equipment and radio officers, as appropriate. We must emphasize that the current radiotelegraphy and radio officer requirements are *not* part of the GMDSS requirements adopted today. At the same time, we do not adopt any rule changes today that relieve compulsory ships from the requirements specified in the Communications Act.

[40] Additionally, we note that protection afforded distress and safety frequencies under 47 C.F.R. § 15.205 will be expanded to cover GMDSS frequencies.

V. PROCEDURAL MATTERS & ORDERING CLAUSES

47. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), our final analysis of the economic impact of these amendments to small entities is set forth in Appendix D.

48. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i) and 303(r)

of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Parts 13 and 80 of the Commission's Rules ARE AMENDED as set forth in the attached Appendix E, effective [30 days after FR publication].

49. IT IS FURTHER ORDERED that a copy of this *Report and Order* will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

50. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

51. For further information, contact Sean White, Room 5114, Private Radio Bureau, Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20544; telephone 202-632-7175.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

LIST OF COMMENTERS

COMMENTS

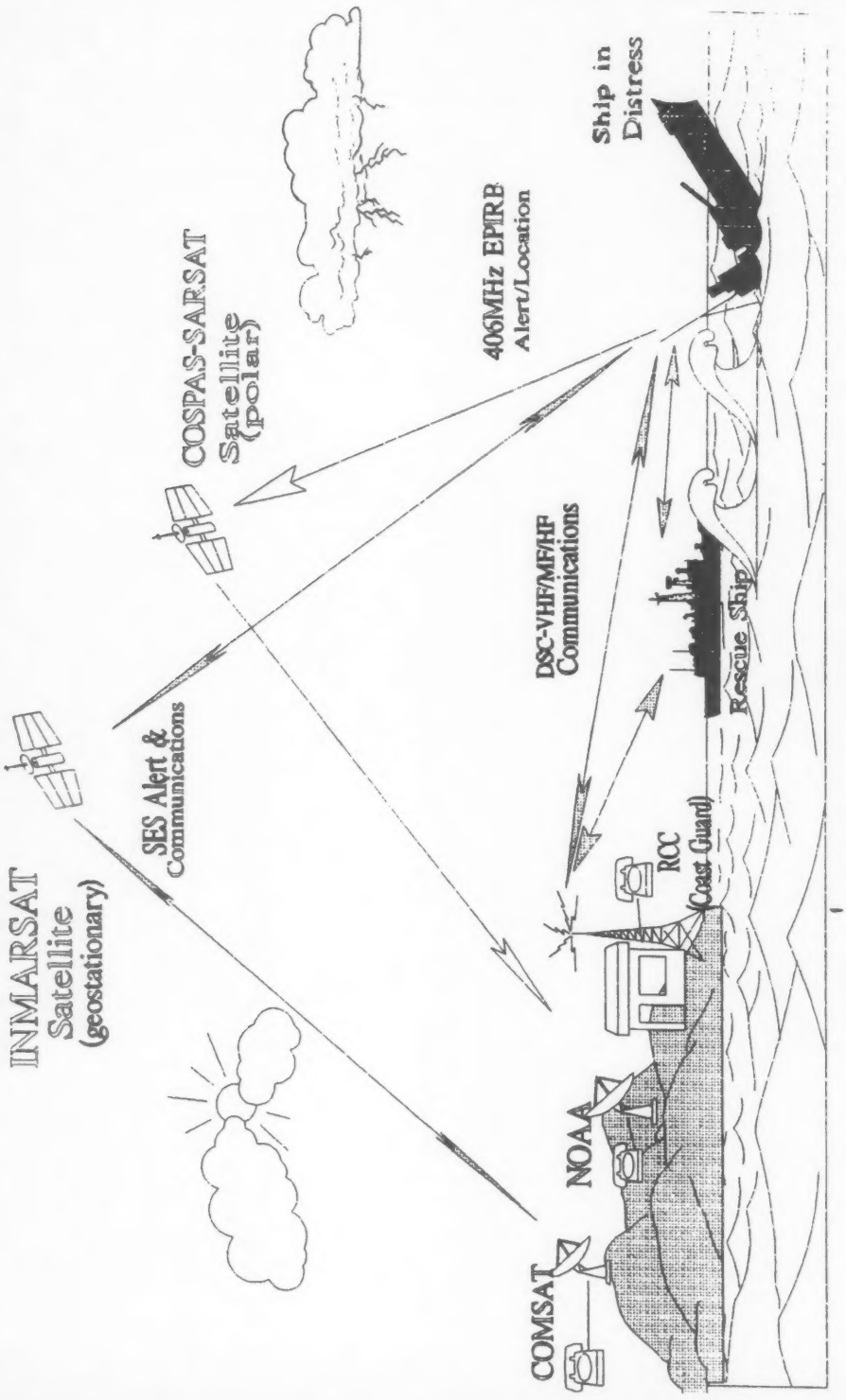
1. Theodore K. Phelps (Phelps)
2. Benjamin J. Russell (Russell)
3. C.E. Spencer (Spencer)
4. Michael V. Zbrozek (Zbrozek)
5. Carl Torgerson (Torgerson)
6. Raytheon Marine Company (Raytheon)
7. Mark W. Reno (Reno)
8. Norman Osborne (Osborne)
9. Richard E. Dixon (Dixon)
10. Marine Communications, Inc. (MC)
11. Radio Technical Commission for Maritime Services (RTCM)
12. United States Coast Guard (Coast Guard)
13. National Marine Electronics Association (NMEA)
14. Dr. Michael C. Trahos (Trahos)
15. American Mobile Satellite Corporation (AMSC)
16. American Maritime Officers Service (AMOS)
17. District 2, Marine Engineers Beneficial Association- Associated Maritime Officers (District 2)
18. American Institute of Merchant Shipping (AIMS)
19. Communications Satellite Corporation (COMSAT)
20. The American Radio Association (ARA)
21. Seafarers Harry Lundeberg School of Seamanship (Lundeberg)
22. Energy Transportation Corporation (ETC)

REPLY COMMENTS

1. Marine Communications, Inc. (MC)
2. United States Coast Guard (Coast Guard)
3. American Institute of Merchant Shipping (AIMS)
4. The American Radio Association (ARA)
5. Communications Satellite Corporation (COMSAT)
6. Exxon Communications Company (Exxon)
7. National Marine Electronics Association (NMEA)

EX PARTE COMMENTS

1. National Wildlife Federation (NWF)
2. The American Radio Association (ARA)



An Example of GMDSS Communications

Appendix B

APPENDIX C

GMDSS IMPLEMENTATION DATES

The GMDSS regulations apply to cargo ships of 300 tons gross tonnage and over when traveling on international voyages or in the open sea, and to ships carrying twelve passengers or more irrespective of size when traveling on international voyages or in the open sea. These ships are termed "compulsory ships." The following is a summary of the implementation dates for the GMDSS.

February 1, 1992 GMDSS provisions of SOLAS Convention enter into force. U.S. ships begin voluntary fitting of GMDSS equipment. Until Communications Act is amended, carriage of current distress and safety system remains mandatory. (47 C.F.R. § 80.1065(b)(5)).

February 1, 1992 New passenger ships and cargo ships of 500 tons gross tonnage and over constructed on or after this date must carry at least two radar transponders (one on each side of ship) and at least three two-way VHF radiotelephones for use in survival craft. New cargo ships of 300-500 tons gross tonnage must carry at least one radar transponder and at least two two-way VHF telephones. (47 C.F.R. § 80.1095).

August 1, 1993 All compulsory ships are required to carry a NAVTEX receiver and a 406 MHz EPIRB. * Ships will no longer be required to carry a Class S EPIRB for survival crafts after equipping with the 406 MHz EPIRB. (47 C.F.R. § 80.1065(b)(1) and SOLAS Convention, Resolution 4).

February 1, 1995 New compulsory ships constucted on or after this date must comply with all GMDSS requirements. (47 C.F.R. § 80.1065(b)(3)).

February 1, 1995 Passenger ships and cargo ships of 500 tons gross tonnage and over constructed before February 1, 1992, must carry at least two radar transponders (one on each side of ship) and at least three two-way VHF radiotelephones for use in survival craft. Cargo ships of 300-500 tons gross tonnage constructed before February 1, 1992, must carry at least one radar transponder and at least two two-way VHF radiotelephones. (47 C.F.R. § 80.1095).

February 1, 1999 All compulsory ships must meet all GMDSS requirements. (47 C.F.R. § 80.1065(b)(4)).

*Note: Although VHF Channel 70 EPIRBs and INMARSAT 1.6 GHz EPIRBs are also allowed, they are not permitted to be used until equipment standards are adopted and type acceptance has been issued for these EPIRBs. Until that time, the 406 MHz EPIRB is the only EPIRB acceptable for use under the FCC's GMDSS regulations.

APPENDIX D

Regulatory Flexibility Act Final Analysis

1. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), our final analysis of the economic impact of these amendments to small entities is as follows:

2. *Need and purpose of this action:* The amendments to the Commission's Rules contained in this *Report and Order* implement the Global Maritime Distress and Safety System. Because of advances in communications technology, the GMDSS will better ensure the safety of life and property at sea than the current distress and safety communications system. The changes are needed to improve maritime distress and safety communications and to ensure that the United States fulfills its international obligations under the Safety of Life at Sea Convention. Refusal to implement the changes will result in failure of the United States to uphold its international obligations and will endanger American lives and property by the perpetuation of an obsolete system incapable of communicating with ships and shore facilities of the major maritime nations.

3. *Summary of issues raised by public comments in response to the Initial Regulatory Flexibility Act Analysis:* The initial analysis in the *Notice* stated that this action would not have a significant economic impact on a substantial number of small entities, as the rules apply to larger cargo and passenger vessels on international voyages and not to smaller vessels, such as recreational or fishing vessels. One commenter, Marine Communications Inc., states that this action would have a significant economic impact on a number of small entities, including manufacturers and maintainers of electronic equipment and entities which provide communications. MC suggests that we issue a new notice of proposed rule making, and publish that notice in maritime trade publications, in order to allow small entities to become aware of this action and comment upon proposed rules. We disagree. First, we reiterate that the majority of the entities affected are not small entities. These rules pertain to cargo ships of 300 gross tons or more and passenger ships on international voyages. Second, while all entities affected by this action will have to change some equipment and procedures, the equipment and procedures involved are already in use to a great extent in the maritime community. No drastically new technology is involved. Thus, adjusting to the GMDSS will not have a significant economic impact on these entities. Most will experience an increase in economic activity as a result of this action. Finally, the broad dissemination in trade publications information about the GMDSS and the pendency of this action gave effective notice to the entire maritime community, as is reflected in the broad spectrum of commenters. We do not feel that the action proposed by MC would significantly increase public awareness of, or response to, this action.

4. *Significant alternatives considered and rejected:* The alternatives to implementing the GMDSS are retaining the current distress and safety system or adopting some other non-GMDSS system. Taking either of these alternatives would both cause the United States to fail under its international obligations and diminish the safety of life at sea, as United States ships would have distress communications systems incompatible with the system used by

the rest of the world. We conclude that the amendments in this *Report and Order* represent the most effective and least burdensome method of complying with our international responsibilities and ensuring the safety of lives and property at sea.

APPENDIX E

Parts 13 and 80 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Part 13 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. In Section 13.2, paragraph (b)(7) is added to read as follows:

§ 13.2 Classification of operator licenses and endorsements.

* * * * *

(b) ***

(7) GMDSS Radio Operator's License (general radio operator's certificate).

* * * * *

3. In Section 13.21, paragraph (a)(7) is added to read as follows:

§ 13.21 Examination elements.

* * * * *

(a) ***

(7) *GMDSS operating practices.* Radio operating procedures and practices of the knowledge and qualifications enumerated below:

(i) Detailed practical knowledge of the operation of all GMDSS sub-systems and equipment;

(ii) Ability to send and receive correctly by radio telephone and narrow-band direct-printing telegraphy;

(iii) Detailed knowledge of the regulations applying to radiocommunications, knowledge of the documents relating to charges for radiocommunications and knowledge of those provisions of the International Convention for the Safety of Life at Sea which relate to radio; and

(iv) Sufficient knowledge of English to be able to express themselves satisfactorily both orally and in writing.

(v) Knowledge of and ability to perform each of the functions listed in § 80.1081.

(vi) Knowledge covering the requirements set forth in IMO Assembly Resolution on Training for Radio Personnel (GMDSS), Annex 3.

* * * * *

4. In Section 13.22, paragraph (b)(6) is added to read as follows:

§ 13.22 Required qualifications.

* * * * *

(b)* * *

(6) GMDSS Radio Operator's License.

(i) Written examinations covering elements 1, 2, and 7.

* * * * *

5. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

6. Part 80 is revised by adding Subpart W to read as follows:

PART 80 - STATIONS IN THE MARITIME SERVICES

Subpart W - Global Maritime Distress and Safety System (GMDSS)

GENERAL PROVISIONS

80.1065	Applicability
80.1067	Inspection of station
80.1069	Maritime sea areas
80.1071	Exemptions
80.1073	Radio operator requirements for ship stations
80.1074	Radio maintenance personnel for at-sea maintenance
80.1075	Radio records
80.1077	Frequencies available

EQUIPMENT REQUIREMENTS FOR SHIP STATIONS

80.1081	Functional requirements
80.1083	Ship radio installations
80.1085	Ship radio equipment - General
80.1087	Ship radio equipment - Sea area A1
80.1089	Ship radio equipment - Sea areas A1 and A2
80.1091	Ship radio equipment - Sea areas A1, A2, and A3
80.1093	Ship radio equipment - Sea areas A1, A2, A3 and A4
80.1095	Survival craft equipment
80.1099	Ship sources of energy
80.1101	Performance standards
80.1103	Equipment authorization
80.1105	Maintenance requirements

OPERATING PROCEDURES FOR DISTRESS AND SAFETY COMMUNICATIONS

80.1109	Distress, urgency, and safety communications
80.1111	Distress Alerting
80.1113	Transmission of a distress alert
80.1115	Transmission of a distress alert by a station not itself in distress
80.1117	Procedure for receipt and acknowledgement of distress alerts
80.1119	Receipt and acknowledgement of distress alerts by coast stations and coast earth stations
80.1121	Receipt and acknowledgement of distress alerts by ship stations and ship earth stations
80.1123	Watch requirements for ship stations
80.1125	Search and rescue coordinating communications
80.1127	On-scene communications
80.1129	Locating and homing signals
80.1131	Transmissions of urgency communications
80.1133	Transmissions of safety communications
80.1135	Transmission of maritime safety information

Subpart W - Global Maritime Distress and Safety System (GMDSS)

This subpart contains the rules applicable to the Global Maritime Distress and Safety System (GMDSS). Every ship of the United States subject to Part II of Title III of the Communications Act or the Safety Convention must comply with the provisions of this subpart. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to the GMDSS. For the purposes of this subpart, distress and safety communications include distress, urgency, and safety calls and messages.

NOTE: No provision of this subpart is intended to eliminate, or in anyway modify, other requirements contained in this part with respect to Part II of Title III of the Communications Act.

GENERAL PROVISIONS

§ 80.1065 Applicability.

(a) The regulations contained in § 80.1119 apply to public coast stations and coast earth stations as of February 1, 1992.

(b) The regulations contained within this subpart apply to all passenger ships regardless of size and cargo ships of 300 tons gross tonnage and upwards as follows:

(1) Ships must comply with §§ 80.1085(a)(4) and 80.1085(a)(6) not later than August 1, 1993.

(2) Ships constructed on or after February 1, 1992, must comply with § 80.1095 as of that date. All other ships must comply with this section as of February 1, 1995.

(3) Ships constructed on or after February 1, 1995, must comply with all requirements of this subpart.

(4) Ships constructed before February 1, 1995, must comply with all requirements of this subpart as of February 1, 1999.

(5) During the period between February 1, 1992, and February 1, 1999, all ships must comply with:

(i) The requirements of this subpart;

(ii) The requirements of Chapter IV of the International Convention for the Safety of Life at Sea, 1974, in force prior to February 1, 1992 (see Subparts Q and R of this part); or

(iii) For ships operated solely on domestic voyages, the requirements of § 80.836.

(6) The expression "ships constructed" means "ships the keels of which are laid, or construction identifiable with a specific ship begins and assembly of that ship has commenced comprising at least 50 tons gross tonnage or 1% of the estimated mass of all structural material, whichever is less.

(c) The requirements of this subpart do not modify the requirements for ships navigated on the Great Lakes or small passenger boats. The requirements contained in the Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973, continue to apply (see subpart T of this part). The requirements contained in Part III of Title III of the Communications Act continue to apply (see subpart S of this part).

(d) No provision in this subpart is intended to prevent the use by any ship, survival craft, or person in distress, of any means at their disposal to attract attention, make known their position and obtain help.

§ 80.1067 Inspection of station.

(a) Ships must have the required equipment inspected at least once every 12 months. If the ship is in compliance with the requirements of the Safety Convention, a Safety Certificate will be issued; if in compliance with the Communications Act, the license will be endorsed accordingly. The effective date of the ship safety certificate is the date the station is found to be in compliance or not later than one business day later.

(b) Certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship.

§ 80.1069 Maritime sea areas.

(a) For the purpose of this subpart, a ship's area of operation is defined as follows:

Sea area A1. An area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available as defined by the International Maritime Organization.

Sea area A2. An area, excluding sea area A1, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available as defined by the International Maritime Organization.

Sea area A3. An area, excluding sea areas A1 and A2, within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available.

Sea area A4. An area outside sea areas A1, A2 and A3.

(b) Maritime sea areas are delineated in the International Maritime Organization Publication *GMDSS Master Plan of Shore-Based Facilities*. The *Master Plan* can be purchased from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

§ 80.1071 Exemptions

(a) In certain circumstances, partial or conditional exemptions may be granted to individual ships from the requirements of §§ 80.1085, 80.1087, 80.1089, 80.1091, and 80.1093 provided: such ships comply with the functional requirements of § 80.1081 and a showing is made that such an exemption will not have a material effect upon the general efficiency of the service for the safety of all ships.

(b) An exemption may be granted under paragraph (a) of this section only:

(1) If the conditions affecting safety are such as to render the full application of §§ 80.1085, 80.1087, 80.1089, 80.1091, and 80.1093 of this part unreasonable or unnecessary or otherwise not in the public interest;

(2) In exceptional circumstances, for a single voyage outside the sea area or sea areas for which the ship is equipped; or

(3) Prior to February 1, 1999, when the ship will be taken permanently out of service within two years of a requirement date specified in § 80.1065 of this part.

§ 80.1073 Radio operators requirements for ship stations.

(a) Ships must carry at least two persons holding GMDSS Radio Operator's Licenses as specified in § 13.2 of the Commission's Rules for distress and safety radiocommunications purposes. The GMDSS Radio Operator's License qualifies personnel as GMDSS radio operators for the purposes of operating GMDSS radio installations, including basic equipment adjustments as denoted in knowledge requirements specified in § 13.21 of the Commission's Rules.

(1) One of the qualified GMDSS radio operators must be designated to have primary responsibility for radiocommunications during distress incidents.

(2) A second qualified GMDSS radio operator must be designated as backup for distress and safety radiocommunications.

(b) A qualified GMDSS radio operator, and a qualified backup, as specified in paragraph (a) of this section must be:

(1) Available to act as the dedicated radio operator in cases of distress as described in § 80.1109(a);

(2) Designated to perform as part of normal routine each of the applicable communications described in § 80.1109(b); and

(3) Responsible for selecting HF DSC guard channels and receiving scheduled maritime safety information broadcasts.

(4) Designated to perform communications described in § 80.1109(c).

(5) Responsible for ensuring that the watches required by § 80.1123 are properly maintained.

(6) Responsible for ensuring that the ship's navigation position is entered, either manually or automatically through a navigation receiver, into all installed DSC equipment at least every four hours while the ship is underway.

§ 80.1074 Radio maintenance personnel for at-sea maintenance.

(a) Ships that elect the at-sea option for maintenance of GMDSS equipment (*see* § 80.1105) must carry at least one person who qualifies as a GMDSS radio maintainer, as specified in paragraph (b) of this section, for the maintenance and repair of equipment specified in this subpart. This person may be, but need not be, the person designated as GMDSS radio operator as specified in § 80.1073.

(b) The following licenses qualify personnel as GMDSS radio maintainers to perform at-sea maintenance of equipment specified in this subpart. For the purposes of this subpart, no order is intended by this listing or the alphanumeric designator.

(1) T-1: First Class Radiotelegraph Operator's Certificate

(2) T-2: Second Class Radiotelegraph Operator's Certificate

(3) G: General Radiotelephone Operator License

(c) While at sea, all adjustments of radio installations, servicing, or maintenance of such installations that may affect the proper operation of the GMDSS station must be performed by, or under the immediate supervision and responsibility of, a qualified GMDSS radio maintainer as specified in paragraph (b) of this section.

(d) The GMDSS radio maintainer must possess the knowledge covering the requirements set forth in IMO Assembly on Training for Radio Personnel (GMDSS), Annex 5 and IMO Assembly on Radio Maintenance Guidelines for the Global Maritime Distress and Safety System related to Sea Areas A3 and A4.

§ 80.1075 Radio records

A record must be kept, as required by the Radio Regulations and § 80.409(a), (b) and (e), of all incidents connected with the radiocommunication service which appear to be of importance to safety of life at sea.

§ 80.1077 Frequencies

The following table describes the frequencies used in the Global Maritime Distress and Safety System:

Alerting

406 EPIRBs	406-406.1 MHz (Earth-to-space) 1544-1545 MHz (space-to-Earth)
INMARSAT A or C SES	1626.5-1645.5 MHz (Earth-to-space)
VHF DSC Ch. 70	156.525 MHz[1]
MF/HF DSC[2]	2187.5 kHz[3], 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz

On-scene communications

VHF Ch. 16	156.8 MHz
MF radiotelephony	2182 kHz
NBDP	2174.5 kHz

Communications involving aircraft

On-scene, including search and rescue	156.8 MHz[4], 121.5 MHz[5], 123.1 MHz, 156.3 MHz, 2182 kHz, 3023 kHz, 4125 kHz, and 5680 kHz[6]

Locating signals

406 MHz EPIRB beacons	121.5 MHz
9 GHz radar transponders	9200-9500 MHz

Maritime safety information (MSI)

International NAVTEX	518 kHz[7]
Warnings	490 kHz[8], 4209.5 kHz[9]
NBDP	4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5 kHz, 22376 kHz, 26100.5 kHz
Satellite	1530-1545 MHz (space-to-Earth)[10]

General distress and safety communications and calling

Satellite	1530-1544 MHz (space-to-Earth) and 1626.5-1645.5 MHz (Earth-to-space)[10]
Radiotelephony	2182 kHz, 4125 kHz, 6215 kHz, 8291 kHz, 12290 kHz, 16420 kHz, and 156.8 MHz
NBDP	2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12520 kHz, and 16695 kHz
DSC	2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, 16804.5 kHz, and 156.525 MHz

Survival craft

VHF radiotelephony MHz frequency	156.8 MHz and one other 156-174
9 GHz radar transponders	9200-9500 MHz

FOOTNOTES TO APPENDIX E

[1] Frequency 156.525 MHz can be used for ship-to-ship alerting and, if within sea area A1, for ship-to-shore alerting.

[2] For ships equipped with MF/HF equipment, there is a watch requirement on 2187.5 kHz, 8414.5 kHz, and one other frequency.

[3] Frequency 2187.5 kHz can be used for ship-to-ship alerting and, if within sea areas A2, for ship-to-shore alerting.

[4] Frequency 156.8 MHz may also be used by aircraft for safety purposes only.

[5] Frequency 121.5 MHz may be used by ships for aeronautical distress and urgency purposes.

[6] The priority of use for ship-aircraft communications is 4125 kHz, then 3023 kHz. Additionally, frequencies 123.1 MHz, 3023 kHz, and 5680 kHz can be used by land stations engaged in coordinated search and rescue operations.

[7] The international NAVTEX frequency 518 kHz is the primary frequency for receiving maritime safety information. The other frequencies are used only to augment the coverage or information provided on 518 kHz.

[8] Frequency 490 kHz cannot be used for MSI employing NBDP transmissions until February 2, 1999.

[9] Frequency 4209.5 kHz is not used in the United States (see 47 C.F.R. § 2.106 footnote 520A).

[10] In addition to EPIRBs, 1544-1545 MHz can be used for narrowband distress and safety operations and 1645.5-1646.5 MHz can be used for relay of distress alerts between satellites. Feeder links for satellite communications are assigned from the fixed satellite service, see 47 C.F.R. § 2.106.

EQUIPMENT REQUIREMENTS FOR SHIP STATIONS

§ 80.1081 Functional requirements

(a) Ships, while at sea, must be capable:

(1) Except as provided in §§ 80.1087(a)(1) and 80.1091(a)(4)(iii), of transmitting ship-to-shore distress alerts by at least two separate and independent means, each using a different radiocommunication service;

(2) Of receiving shore-to-ship distress alerts;

(3) Of transmitting and receiving ship-to-ship distress alerts;

(4) Of transmitting and receiving search and rescue co-ordinating communications;

(5) Of transmitting and receiving on-scene communications;

(6) Of transmitting and receiving signals for locating;

(7) Of transmitting and receiving maritime safety information;

(8) Of transmitting and receiving general radiocommunications to and from shore-based radio systems or networks; and

(9) Of transmitting and receiving bridge-to-bridge communications.

§ 80.1083 Ship radio installations

(a) Ships must be provided with radio installations capable of complying with the functional requirements prescribed by § 80.1081 throughout its intended voyage and, unless exempted under § 80.1071, complying with the requirements of § 80.1085 and, as appropriate for the sea area of areas through which it will pass during its intended voyage, the requirements of either §§ 80.1087, 80.1089, 80.1091, or 80.1093.

(b) The radio installation must:

(1) Be so located that no harmful interference of mechanical, electrical or other origin affects its proper use, and so as to ensure electromagnetic compatibility and avoidance of harmful interaction with other equipment and systems;

(2) Be so located as to ensure the greatest possible degree of safety and operational availability;

(3) Be protected against harmful effects of water, extremes of temperature and other adverse environmental conditions;

(4) Be provided with reliable, permanently arranged electrical lighting, independent of the main and emergency sources of electrical power, for the adequate illumination of the radio controls for operating the radio installation; and

(5) Be clearly marked with the call sign, the ship station identity and other codes as applicable for the use of the radio installation.

(c) Control of the VHF radiotelephone channels required for navigational safety must be immediately available on the navigating bridge convenient to the conning position and, where necessary, facilities should be available to permit radiocommunications from the wings of the navigating bridge. Portable VHF equipment may be used to meet the latter provision.

§ 80.1085 Ship radio equipment - General

This section contains the general equipment requirements for all ships subject to this subpart.

(a) Ships must be provided with:

(1) A VHF radio installation capable of transmitting and receiving:

(i) DSC on the frequency 156.525 MHz (channel 70), and it must be able to initiate the transmission of distress alerts on channel 70 from the position from which the ship is normally navigated; and

(ii) Radiotelephony on the frequencies 156.300 MHz (channel 6), 156.650 MHz (channel 13), and 156.800 MHz (channel 16);

(2) A dedicated, non-scanning radio installation capable of maintaining a continuous DSC watch on VHF channel 70 which may be separate from, or combined with, that required by paragraph (a)(1)(i) of this section;

(3) A radar transponder capable of operating in the 9 GHz band, which must be stowed so that it is easily utilized (this transponder may be one of those required by § 80.1095(b) for a survival craft);

(4) A receiver capable of receiving international NAVTEX service broadcasts;

(5) If the ship is engaged on voyages in any area of INMARSAT coverage in which an international NAVTEX service is not provided, a radio facility for reception of maritime safety information by the INMARSAT enhanced group calling system, *i.e.*, SafetyNet, (this requirement does not apply to ships engaged exclusively on voyages in areas where an HF direct-printing telegraphy maritime safety information service, as identified by the IMO GMDSS Master Plan Publication, is provided and the ship is fitted with equipment capable of receiving such service); and

(6) A satellite emergency position-indicating radio beacon (satellite EPIRB) which must be:

(i) Capable of transmitting a distress alert through the polar orbiting satellite service operating in the 406 MHz band (406 MHz EPIRB); and

(ii) Installed in an easily accessible position, ready to be manually released and capable of being carried by one person into a survival craft, capable of floating free if the ship sinks and of being automatically activated when afloat, and capable of being activated manually.

(b) Until February 1, 1999, all ships must be equipped with a radio installation consisting of a radiotelephone distress frequency 2182 kHz watch receiver prescribed by § 80.807. This requirement does not apply to ships constructed on or after February 1, 1997.

(c) Until February 1, 1999, all ships, except ships engaged on voyages in sea area A1 only, must be equipped with a device for generating the 2182 kHz radiotelephone alarm signal as prescribed by § 80.807. This requirement does not apply to ships constructed on or after February 1, 1997.

(d) Ships must carry the most recent edition of the IMO publication entitled *GMDSS Master Plan of Shore-Based Facilities*. Notice of new editions will be published in the Federal Register and copies may be obtained from: International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

§ 80.1087 Ship radio equipment - Sea area A1

This section contains the additional equipment requirements for ships that remain within sea area A1 at all times.

(a) In addition to meeting the requirements of § 80.1085, ships engaged on voyages exclusively in sea area A1 must be provided with a radio installation capable of initiating the transmission of ship-to-shore distress alerts from the position from which the ship is normally navigated, operating either:

(1) On VHF using DSC; or

(2) Through the polar orbiting satellite service on 406 MHz (this requirement may be fulfilled by the 406 MHz EPIRB, required by § 80.1085(a)(6), either by installing the 406 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

(3) On MF using DSC if the ship is engaged on voyages within coverage of MF coast stations equipped with DSC; or

(4) On HF using DSC; or

(5) Through the INMARSAT geostationary satellite service if within INMARSAT coverage. This requirement may be fulfilled by an INMARSAT ship earth station capable of two way communication.

(b) The VHF radio installation, required by § 80.1085(a)(1), must also be capable of transmitting and receiving general radiocommunications using radiotelephony.

§ 80.1089 Ship radio equipment - Sea areas A1 and A2

This section contains the additional equipment requirements for ships that remain within sea areas A1 or A2 at all times. Ships fitting in accordance with this section satisfy the sea area A1 requirements denoted in § 80.1087.

(a) In addition to meeting the requirements of § 80.1085 of this part, ships engaged on voyages beyond sea area A1, but remaining within sea area A2, must be provided with:

(1) An MF radio installation capable of transmitting and receiving, for distress and safety purposes, on the frequencies:

(i) 2187.5 kHz using DSC; and

(ii) 2182 kHz using radiotelephony;

(2) A radio installation capable of maintaining a continuous DSC watch on the frequency 2187.5 kHz which may be separate from or combined with, that required by paragraph (a)(1)(i) of this section; and

(3) Means of initiating the transmission of ship-to-shore distress alerts by a radio service other than MF operating either

(i) Through the polar orbiting satellite service on 406 MHz (this requirement may be fulfilled by the 406 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

(ii) On HF using DSC; or

(iii) Through the INMARSAT geostationary satellite service if within INMARSAT coverage; this requirement may be fulfilled by an INMARSAT ship earth station.

(b) It must be possible to initiate transmission of distress alerts by the radio installations specified in paragraphs (a)(1) and (a)(3) of this section from the position from which the ship is normally navigated.

(c) Ships subject to this section must be capable of transmitting and receiving general radiocommunications using radiotelephony or direct-printing telegraphy by either:

(1) A radio installation operating on working frequencies in the bands between 1605-4000 kHz or between 4000-27500 kHz (this requirement may be fulfilled by the addition of this capability to the equipment required by paragraph (a)(1) of this section); or

(2) An INMARSAT ship earth station.

§ 80.1091 Ship radio equipment - Sea areas A1, A2, and A3

This section contains the additional equipment requirements for ships that remain within sea areas A1, A2, or A3 at all times. Ships fitting in accordance with this section satisfy the requirements denoted in §§ 80.1087 and 80.1089 for sea areas A1 and A2. Ships fitting in accordance to this section have the option to comply with either the requirements of paragraph (a) or (b) of this section.

(a) In addition to meeting the requirements of § 80.1085, ships subject to this section must be provided with:

(1) An INMARSAT ship earth station capable of:

(i) Transmitting and receiving distress and safety communications using direct-printing telegraphy;

(ii) Initiating and receiving distress priority calls;

(iii) Maintaining watch for shore-to-ship distress alert, including those directed to specifically defined geographical areas;

(iv) Transmitting and receiving general radiocommunications, using either radiotelephony or direct-printing telegraphy; and

(2) An MF radio installation capable of transmitting and receiving, for distress and safety purposes, on the frequencies:

(i) 2187.5 kHz using DSC; and

(ii) 2182 kHz using radiotelephony; and

(3) A radio installation capable of maintaining a continuous DSC watch on the frequency 2187.5 kHz which may be separate from or combined with that required by paragraph (a)(2)(i) of this section; and

(4) Means of initiating the transmission of ship-to-shore distress alerts by a radio service operating either:

(i) Through the polar orbiting satellite service on 406 MHz (this requirement may be fulfilled by the 406 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

(ii) On HF using DSC; or

(iii) Through the INMARSAT geostationary satellite service, by an additional ship earth station.

(b) In addition to meeting the requirements of § 80.1085, ships subject to this section must be provided with:

(1) An MF/HF radio installation capable of transmitting and receiving on all distress and safety frequencies in the bands between 1605-27500 kHz using DSC, radiotelephony, and narrow-band direct-printing telegraphy; and

(2) Equipment capable of maintaining DSC watch on 2187.5 kHz, 8414.5 kHz and on at least one of the distress and safety DSC frequencies 4207.5 kHz, 6312 kHz, 12577 kHz, or 16804.5 kHz although it must be possible to select any of these DSC distress and safety frequencies at any time (this equipment may be separate from, or combined with, the equipment required by paragraph (b)(1) of this section); and

(3) Means of initiating the transmission of ship-to-shore distress alerts by a radiocommunication service other than HF operating either:

(i) Through the polar orbiting satellite service on 406 MHz (this requirement may be fulfilled by the 406 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

(ii) Through the INMARSAT geostationary satellite service (this requirement may be fulfilled by an INMARSAT ship earth station).

(4) In addition, ships must be capable of transmitting and receiving general radiocommunications using radiotelephony or direct-printing telegraphy by an MF/HF radio installation operating on working frequencies in the bands between 1605-4000 kHz and between 4000-27500 kHz (this requirement may be fulfilled by the addition of this capability to the equipment required by paragraph (b)(1) of this section).

(c) It must be possible to initiate transmission of distress alerts by the radio installations specified in paragraphs (a)(1), (a)(2), (a)(4), (b)(1), and (b)(3) of this section from the position from which the ship is normally navigated.

§ 80.1093 Ship radio equipment - Sea areas A1, A2, A3 and A4

This section contains the additional equipment requirements for ships that sail in all sea areas, *i.e.*, sea areas A1, A2, A3, and A4. Ships fitting in accordance with this section satisfy the requirements denoted in §§ 80.1087, 80.1089, and 80.1091 of this part for sea areas A1, A2, and A3.

(a) In addition to meeting the requirements of § 80.1085, ships engaged on voyages in all sea areas must be provided with the radio installations and equipment required by § 80.1091(b), except that the equipment required by § 80.1091(b)(3)(ii) cannot be accepted as an alternative to that required by regulation § 80.1091(b)(3)(i), which must always be provided.

(b) Ships engaged on voyages in all sea areas also must comply with the requirements of § 80.1091(c).

§ 80.1095 Survival craft equipment

(a) At least three two-way VHF radiotelephone apparatus must be provided on every passenger ship and on every cargo ship of 500 tons gross tonnage and upwards. At least two two-way VHF radiotelephone apparatus must be provided on every cargo ship of between 300-500 tons gross tonnage. Portable two-way VHF radiotelephones must be stowed in such locations that they can be rapidly placed in any survival craft other than liferafts required by Regulation III/26.1.4 of the SOLAS Convention. Alternatively, survival craft may be fitted with a fixed two-way VHF radiotelephone installation. Two-way VHF radiotelephone apparatus, portable or fixed, must conform to performance standards as specified in § 80.1101. Two-way VHF radiotelephone apparatus provided on board ships prior to February 1, 1992, and not complying fully with the performance standards specified in § 80.1101, may be used until February 1, 1999, provided it is compatible with approved two-way VHF radiotelephone apparatus.

(b) At least one radar transponder must be carried on each side of every passenger ship and every cargo ship of 500 tons gross tonnage and upwards. At least one radar transponder must be carried on every cargo ship of 300 tons gross tonnage and upwards but less than 500 tons gross tonnage. Such radar transponders must conform to performance standards as specified in § 80.1101. The radar transponders must be stowed in such locations that they can be rapidly placed in any survival craft other than liferafts required on cargo ships in forward and aft areas (see Regulation III/26.1.4 of the SOLAS Convention). Alternatively, one radar transponder must be stowed in each survival craft other than those required by Regulation III/26.1.4 of the SOLAS Convention. One of these radar transponders may be the radar transponder required by § 80.1085(a)(3).

(c) Survival craft equipment must be tested at intervals not to exceed twelve months. For batteries used for survival craft equipment, the month and year of its manufacture must be permanently marked on the battery. Also, the month and year upon which 50 percent of its useful life will expire must be permanently marked on both the battery and the outside of the transmitter. Batteries must be replaced if 50 percent of their useful life has expired or if the transmitter has been used in an emergency situation.

§ 80.1099 Ship sources of energy

(a) There must be available at all times, while the ship is at sea, a supply of electrical energy sufficient to operate the radio installations and to charge any batteries used as part of a reserve sources of energy for the radio installations.

(b) A reserve sources of energy to supply radio installations must be provided on every ship for the purpose of conducting distress and safety radiocommunications, in the event of failure of the ship's main and emergency sources of electrical power. The reserve sources of energy must be capable of simultaneously operating the VHF radio installation required by § 80.1085(a)(1) and, as appropriate for the sea area or sea areas for which the ship is equipped, either the MF radio installation required by § 80.1089(a)(1), the MF/HF radio installation required by §§ 80.1091(a)(2)(i) or 80.1093(a), or the INMARSAT ship earth station required by § 80.1091(a)(1) and any of the additional loads mentioned in paragraphs (d), (e), and (h) of this section for a period of at least:

(1) One hour, on ships constructed on or after February 1, 1995;

(2) One hour, on ships constructed before February 1, 1995, if the emergency source of electrical power complies fully with all relevant requirements of SOLAS, Chapter II-1, Regulation 42 or 43 (as amended); or

(3) Six hours, on ships constructed before February 1, 1995, and on cargo ships of less than 500 tons gross tonnage, if the emergency source of electrical power is not provided or does not comply fully with all relevant requirements of SOLAS, Chapter II-1, Regulation 42 or 43 (as amended).

(c) The reserve sources of energy need not supply independent HF and MF radio installations at the same time. The reserve sources of energy must be independent of the propelling power of the ship and the ship's electrical system.

(d) Where, in addition to the VHF radio installation, two or more of the other radio installations, referred to in paragraph (b) of this section, can be connected to the reserve sources of energy, they must be capable of simultaneously supplying, for one hour, as specified in paragraph (b) of this section, the VHF radio installation and:

(1) All other radio installations which can be connected to the reserve sources of energy at the same time; or

(2) Whichever of the other radio installations will consume the most power, if only one of the other radio installations can be connected to the reserve sources of energy at the same time as the VHF radio installation.

(e) The reserve sources of energy may be used to supply the electrical lighting required by § 80.1083(b)(4).

(f) Where a reserve source of energy consists of a rechargeable accumulator battery or batteries:

(1) A means of automatically charging such batteries must be provided which must be capable of recharging them to minimum capacity requirements within 10 hours; and

(2) The capacity of the battery or batteries must be checked, using an appropriate method, at intervals not exceeding 12 months. These checks must be performed when the vessel is not at sea.

(g) The accumulator batteries which provide a reserve source of energy must be installed to ensure: the highest degree of service, a reasonable lifetime, reasonable safety; that the battery temperatures remain within the manufacturer's specifications whether under charge or idle; and that when fully charged, the batteries will provide at least the minimum required hours of operation under all weather conditions.

(h) If an uninterrupted input of information from the ship's navigational or other equipment to a radio installation required by this subpart is needed to ensure its proper performance, means must be provided to ensure the continuous supply of such information in the event of failure of the ship's main or emergency source of electrical power.

(i) An uninterruptible power supply or other means of ensuring a continuous supply of electrical power, within equipment tolerances, shall be provided to all GMDSS equipment that could be affected by normal variations and interruptions of ship's power.

§ 80.1101 Performance standards

(a) All equipment specified in this subpart must meet the general requirements for shipboard equipment as listed below which are incorporated by reference.

(1) IMO Resolution A.694(17), "General Requirements for Shipborne Radio Equipment Forming Part of the Global Maritime Distress and Safety System and for Electronic Navigational Aids."

(2) CCITT Recommendation E.161, "Arrangement of Figures, Letters and Symbols on Telephones and Other Devices that Can Be Used for Gaining Access to a Telephone Network."

(3) CCITT Recommendation Q.11, "Numbering Plan of the ISDN Era."

(4) IEC Publication 92-101, "Electrical Installations in Ships." IEC Publication 533, "Electromagnetic Compatibility of Electrical and Electronic Installations in Ships." English version.

(5) IEC Publication 945, "Marine Navigational Equipment." English version.

(6) ISO Standard 3791, "Office Machines and Data Processing Equipment - Keyboard Layouts for Numeric Applications." English version.

(b) The equipment specified in this subpart must also conform to the appropriate performance standards listed below which are incorporated by reference.

(1)NAVTEX receivers:

(i) IMO Resolution A.525(13), "Performance Standards for Narrow-band Direct Printing Telegraph Equipment for the Reception of Navigational and Meteorological Warnings and Urgent Information to Ships."

(ii) CCIR Recommendation 540-2, "Operational and Technical Characteristics for an Automated Direct-printing Telegraph System for Promulgation of Navigational and Meteorological Warnings and Urgent Information to Ships."

(2)*VHF radio equipment:*

(i) IMO Resolution A.609(15), "Performance Standards for Shipborne VHF Radio Installations Capable of Voice Communication and Digital Selective Calling."

(ii) CCIR Recommendation 493-4, "Digital Selective-calling System for use in the Maritime Mobile Service."

(3)*MF radio equipment:*

(i) IMO Resolution A.610(15), "Performance Standards for Shipborne MF Radio Installations Capable of Voice Communication and Digital Selective Calling."

(ii) CCIR Recommendation 493-4, "Digital Selective-calling System for use in the Maritime Mobile Service."

(4) *MF/HF radio equipment:*

(i) IMO Resolution A.613(15), "Performance Standards for Shipborne MF/HF Radio Installations capable of Voice Communication, Narrow-band Direct Printing and Digital Selective Calling."

(ii) CCIR Recommendations 493-4, "Digital Selective-calling System for use in the Maritime Mobile Service."

(iii) CCIR Recommendation 625-1, "Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service." Equipment may conform to CCIR Recommendation 476-4, "Direct-Printing Telegraph Equipment in the Maritime Mobile Service," in lieu of CCIR Recommendation 625-1, where such equipment was installed on ships prior to February 1, 1993.

(5) *406 MHz EPIRBs:*

(i) IMO Resolution A.611(15), "Performance Standards for Float-free Satellite Emergency Position-indicating Radio Beacons Operating on 406 MHz."

(ii) IMO Resolution A.662(16), "Performance Standards for Float-free Release and Activation Arrangements for Emergency Radio Equipment."

(iii) CCIR Recommendation 633-1, "Transmission Characteristics of a Satellite Emergency Position-indicating Radiobeacon (Satellite EPIRB) System Operating Through a Low Polar-orbiting Satellite System in the 406 MHz Band."

(iv) The 406 MHz EPIRBs must also comply with § 80.1061.

(6) *9 GHz radar transponders:*

(i) IMO Resolution A.604(15), "Performance Standards for Survival Craft Radar Transponders for Use in Search and Rescue Operations."

(ii) CCIR Recommendation 628-1, "Technical Characteristics for Search and Rescue Radar Transponders."

(7) *Two-way VHF radiotelephone:*

(i) IMO Resolution A. 605(15), "Performance Standards for Survival Craft Twoway VHF Radiotelephone Apparatus."

(8) *INMARSAT-A SES:*

(i) IMO Resolution A.608(15), "Performance Standards for Ship Earth Stations Capable of Two-way Communications."

(ii) CCIR Recommendation 493-4, "Digital Selective-calling System for use in the Maritime Mobile Service."

(9) *INMARSAT-C SES:*

(i) IMO Resolution A.663(16), "Performance Standards for INMARSAT Standard-C Ship Earth Stations Capable of Transmitting and Receiving Direct-printing Communications."

(ii) CCIR Recommendation 493-4, "Digital Selective-calling System for use in the MAritime Mobile Service."

(10) *INMARSAT EGC:*

(i) IMO Resolution A.664(16), "Performance Standards for Enhanced Group Call Equipment."

(c) The above-referenced documents have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Identification data and place to purchase for each of the above-referenced documents are listed as follows:

(1) Copies of IMO Resolutions, the 1974 SOLAS Convention, and 1983 and 1988 SOLAS Convention amendments can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(i) IMO Resolution A.525(13) is contained in the *Resolutions and Other Decisions of the Assembly of the International Maritime Organization*, 13th Session, 1983, (IMO, London, 1984), Sales Number 073 84.07.E.

(ii) IMO Resolutions A.604(15), A.605(15), A.608(15), A.609(15), A.610(15), A.611(15) and A.613(15) are contained in the *Resolutions and Other Decisions of the Assembly of the International Maritime Organization*, 15th Session, 1987, (IMO, London, 1988), Sales Number 130 88.03.E.

(iii) IMO Resolutions A.663(16) and A.664(16) are contained in the *Resolutions and Other Decisions of the Assembly of the International Maritime Organization*, 16th Session, 1989, (IMO, London, 1990), Sales Number 136 90.04.E.

(iv) IMO Resolution A.694(17) can be ordered from IMO by requesting "A.694 from the seventeenth session" until it is published in the *Resolutions and Other Decisions of the Assembly of the International Maritime Organization*, 17th Session, 1991.

(2) CCIR Recommendations, ITU Radio Regulations, and CCITT publications can be purchased from the International Telecommunications Union (ITU), Place des Nations, CH-1211 Geneva 20, Switzerland.

(i) All CCIR Recommendations referenced in this Section are contained in *Recommendations of the CCIR, 1990, Volume VIII*, (ITU, Geneva, 1990), 92-61-0424104.

(ii) CCITT Recommendation E.161 is contained in *CCITT Volume II - Telephone and Network ISDN - Operation, Numbering, Routing and Mobile Service*, (ITU, Geneva, 1989), ISBN 92-61-03261-3.

(iii) CCITT Recommendation Q.11 is contained in *CCITT Blue Book Volume VI, General Recommendation on Telephone Switching and Signalling*, (ITU, Geneva, 1989), ISBN 92-61-03451-9.

(3) IEC Publications can be purchased from the International Electrotechnical Commission, 3 Rue de Varembe, CH-1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, telephone (212) 642-4900.

(4) ISO Standards can be purchased from the International Organization for Standardization, 1 Rue de Varembe, CH-1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, telephone (212) 642-4900.

(5) Copies of the publications listed in this Section that are incorporated by reference may be inspected at the Federal Communications Commission, 1919 M Street, N.W., Dockets Branch (Room 239), Washington, D.C. or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington D.C.

§ 80.1103 Equipment authorization

(a) All equipment specified § 80.1101(b) must be type accepted in accordance with 47 C.F.R. Part 2, except equipment used in the INMARSAT space segment. Equipment intended for use in the INMARSAT space segment must be type-approved by INMARSAT and notified in accordance with 47 C.F.R. Part 2. The technical parameters of the equipment must conform to the performance standards as specified in § 80.1101.

(b) Applicants for type acceptance must submit with their applications measurement data sufficiently complete to ensure compliance with the technical parameters. The application must include the items listed in 47 C.F.R. § 2.983. Additional measurement data or information may be requested depending upon the equipment. For items not listed in § 2.983 of this chapter, the applicant must attest that the equipment complies with performance standards as specified in § 80.1101 and, where applicable, that measurements have been made that demonstrate the necessary compliance. Submission of representative data demonstrating compliance is not required unless requested by the Commission.

(c) Applicants for notification must attest that the equipment complies with performance standards as specified in § 80.1101 and, where applicable, that measurements have been made that demonstrate the necessary compliance. Submission of representative data demonstrating compliance is not required unless requested by the Commission. An application must include the items listed in § 2.975 of this chapter and a copy of the INMARSAT type approval certificate indicating that equipment meets GMDSS standards and includes all peripheral equipment associated with the specific unit under review.

(d) Submission of a sample unit is not required unless specifically requested by the Commission.

(e) In addition to the requirements in Part 2 of this chapter, equipment specified in § 80.1101(b) shall be labelled as follows: "This device complies with the GMDSS provisions of Part 80 of the FCC Rules."

§ 80.1105 Maintenance requirements

(a) Equipment must be so designed that the main units can be replaced readily, without elaborate recalibration or readjustment. Where applicable, equipment must be constructed and installed so that it is readily accessible for inspection and on-board maintenance purposes. Adequate information must be provided to enable the equipment to be properly operated and maintained (see IMO Resolution A.569(14)).

(b) Radio equipment required by this subpart must be maintained to provide the availability of the functional requirements specified in § 80.1081 and to meet the performance standards specified in § 80.1101.

(c) On ships engaged on voyages in sea areas A1 and A2, the availability must be ensured by duplication of equipment, shore-based maintenance, or at-sea electronic maintenance capability, or a combination of these.

(d) On ships engaged on voyages in sea areas A3 and A4, the availability must be ensured by using a combination of at least two of the following methods: duplication of equipment, shore-based maintenance, or at-sea electronic maintenance capability.

(e) Irrespective of the maintenance methods used, a ship must not depart from any port unless and until the ship is capable of performing all distress and safety functions as specified in § 80.1081.

(f) Irrespective of the maintenance methods used, all manufacturers' instruction manuals and maintenance manuals for each piece of equipment required and installed must be available on-board ship. Adequate tools, spare parts, and test equipment appropriate to the methods used by the ship as recommended by the manufacturer should be provided. The manuals, tools, spare parts, and test equipment, as applicable, should be readily accessible.

(g) If the duplication of equipment maintenance method is used, the following radio installations, in addition to other equipment requirements specified in this subpart, must be available on-board ships for their sea areas as applicable. Equipment carried in accordance with this paragraph must comply with §§ 80.1101 and 80.1103. Additionally, each radio installation must be connected to a separate antenna and be installed and be ready for immediate operation.

(1) Ships, equipped in accordance with § 80.1087 for sea area A1, must carry a VHF radio installation complying with the requirements of § 80.1085(a)(1).

(2) Ships, equipped in accordance with § 80.1089 for sea areas A1 and A2, must carry a VHF radio installation complying with the requirement of § 80.1085(a)(1) and an MF radio installation complying with the requirements of § 80.1089(a)(1) and being able to fully comply with watch requirements as specified in § 80.1123(a)(2). The MF radio installation installed for duplication must also comply with the requirements § 80.1089(c).

(3) Ships, equipped in accordance with § 80.1091 for sea areas A1, A2, and A3, must carry a VHF radio installation complying with the requirement of § 80.1085(a)(1) and either an MF/HF radio installation complying with the requirements of § 80.1091(b)(1) and being able to fully comply with watch requirements as specified in § 80.1123(a)(2) or an INMARSAT ship earth station complying with the requirements of § 80.1091(a)(1). The MF/HF radio installation or the INMARSAT ship earth station installed for duplication must also comply with the requirements § 80.1091(c).

(4) Ships, equipped in accordance with § 80.1093 for sea areas A1, A2, A3, and A4, must carry a VHF radio installation complying with the requirement of § 80.1085(a)(1) and an MF/HF radio installation complying with the requirements of § 80.1091(b)(1) and being able to fully comply with watch requirements as specified in § 80.1123(a)(2). The MF/HF radio installation installed for duplication must also comply with the requirements § 80.1091(c).

(h) The radio installations specified in paragraph (g) of this section (referred as "duplicated equipment"), in addition to the appropriate radio equipment specified in § 80.1099 (referred as "basic equipment"), must be connected to the reserve sources of energy required by § 80.1099. The capacity of the reserve sources of energy should be sufficient to operate the particular installation (*i.e.*, the basic equipment or the duplicated equipment) with the highest power consumption, for the appropriate period specified in § 80.1099. However, the arrangement for the reserve sources of energy must be such that a single fault in this arrangement cannot affect both the basic and the duplicated equipment.

(i) If the shore-based maintenance method is used, the following requirements apply.

(1) Maintenance services must be completed and performance verified and noted in the ship's record before departure from the first port of call entered after any failure occurs.

(2) Each GMDSS equipment must be tested and performance verified and the results noted in the ship's record before departure from every port. To accomplish this, each ship shall carry a performance checkoff sheet listing each GMDSS equipment carried on a mandatory basis.

(j) If the at-sea maintenance method is used, the following requirements apply.

(1) Adequate additional technical documentation, tools, test equipment, and spare parts must be carried on-board ship to enable a qualified maintainer as specified in § 80.1074 to perform tests and localize and repair faults in the radio equipment.

(2) Only persons that comply with the requirements of § 80.1074 may perform at-sea maintenance on radio installations required by this subpart.

OPERATING PROCEDURES FOR DISTRESS AND SAFETY COMMUNICATIONS

§ 80.1109 Distress, urgency, and safety communications

(a) Distress traffic consists of all messages relating to the immediate assistance required by the ship in distress, including search and rescue communications and on-scene communications. Distress traffic must as far as possible be on the frequencies contained in § 80.1077.

(b) Urgency and safety communications include: navigational and meteorological warnings and urgent information; ship-to-ship safety navigation communications; ship reporting communications; support communications for search and rescue operations; other urgency and safety messages and communications relating to the navigation, movements and needs of ships and weather observation messages destined for an official meteorological service.

(c) Intership navigation safety communications are those VHF radiotelephone communications conducted between ships for the purpose of contributing to the safe movement of ships. The frequency 156.650 MHz is used for intership navigation safety communications (see § 80.1077).

§ 80.1111 Distress alerting

(a) The transmission of a distress alert indicates that a mobile unit or person is in distress and requires immediate assistance. The distress alert is a digital selective call using a distress call format in bands used for terrestrial radiocommunication or a distress message format, which is relayed through space stations.

(b) The distress alert must be sent through a satellite either with absolute priority in general communication channels or on exclusive distress and safety frequencies or, alternatively, on the distress and safety frequencies in the MF, HF, and VHF bands using digital selective calling.

(c) The distress alert must be sent only on the authority of the person responsible for the ship, aircraft or other vehicle carrying the mobile station or the mobile earth station.

(d) All stations which receive a distress alert transmitted by digital selective calling must immediately cease any transmission capable of interfering with distress traffic and must continue watch until the call has been acknowledged.

§ 80.1113 Transmission of a distress alert

(a) The distress alert must identify the station in distress and its position. The distress alert may also contain information regarding the nature of the distress, the type of assistance required, the course and speed of the mobile unit, the time that this information was recorded and any other information which might facilitate rescue.

(b) The format of distress calls and distress messages must be in accordance with CCIR Recommendation 493 as specified in § 80.1101.

(c) Ship-to-shore distress alerts are used to alert Rescue Coordination Centers via coast stations or coast earth stations that a ship is in distress. These alerts are based on the use of transmissions via satellites (from a ship earth station or a satellite EPIRB) and terrestrial services (from ship stations and EPIRBs).

(d) Ship-to-ship distress alerts are used to alert other ships in the vicinity of the ship in distress and are based on the use of digital selective calling in the VHF, MF, and HF bands.

(e) Shore-to-ship distress alert relays are used by a station or Rescue Coordination Center to relay information about a ship in distress to, as appropriate, all ships, a selected group of ships, or a specific ship by satellite and/or terrestrial means. The distress alert relay must contain the identification of the mobile unit in distress, its position and all other information which might facilitate rescue.

§ 80.1115 Transmission of a distress alert by a station not itself in distress

(a) A station in the mobile or mobile-satellite service which learns that a mobile unit is in distress must initiate and transmit a distress alert relay in any of the following cases:

(1) When the mobile unit in distress is not itself in a position to transmit the distress alert; or

(2) When the master or person responsible for the mobile unit not in distress or the person responsible for the land station determines that further help is necessary.

(b) A station transmitting a distress alert relay in accordance with paragraph (a) of this section or § 80.1121(c) must indicate that it is not itself in distress.

§ 80.1117 Procedure for receipt and acknowledgement of distress alerts

(a) Acknowledgement by digital selective calling of receipt of a distress alert in the terrestrial services must comply with CCIR Recommendation 541, which is incorporated by reference.

(b) Acknowledgement through a satellite of receipt of a distress alert from a ship earth station must be sent immediately (see § 80.1119).

(c) Acknowledgement by radiotelephony of receipt of a distress alert from a ship station or a ship earth station must be given in the following form:

(1) The distress signal MAYDAY;

(2) The call sign or other identification of the station sending the distress message, spoken three times;

(3) The words THIS IS (or DE spoken as DELTA ECHO in case of language difficulties);

(4) The call sign or other identification of the station acknowledging receipt, spoken three times;

(5) The word RECEIVED (or RRR spoken as ROMEO ROMEO ROMEO in case of language difficulties);

(6) The distress signal MAYDAY.

(d) The acknowledgement by direct-printing telegraphy of receipt of a distress alert from a ship station must be given in the following form:

(1) The distress signal MAYDAY;

(2) The call sign or other identification of the station sending the distress alert;

(3) The word DE;

(4) The call sign or other identification of the station acknowledging receipt of the distress alert;

(5) The signal RRR;

(6) The distress signal MAYDAY.

(e) The acknowledgement by direct-printing telegraphy of receipt of a distress alert from a ship earth station must be given by the coast earth station receiving the distress alert by retransmitting the ship station identity of the ship transmitting the distress alert.

§ 80.1119 Receipt and acknowledgement of distress alerts by coast stations and coast earth stations

(a) Coast stations that receive a distress alert should defer acknowledgement for a short interval so that receipt may be acknowledged by a Rescue Coordination Center. Where an acknowledgement is not forthcoming within 3 minutes, the coast station in receipt of distress alerts must ensure that they are routed to a Rescue Coordination Center as soon as possible. Coast stations must provide assistance for distress communications when requested to do so by the U.S. Coast Guard. (This subpart does not specify any radio watches for coast stations.)

(b) Coast earth stations in receipt of distress alerts must ensure that they are routed as soon as possible to a Rescue Coordination Center. Coast earth stations must relay, as soon as possible, an acknowledgement of a distress alert from a Rescue Coordination Center.

(c) Certain messages must be carried without charge, regardless of the means by which they are transmitted:

(1) Distress alert messages;

(2) Search and rescue coordination messages;

(3) Medical assistance messages where an imminent danger to life is present, or

(4) Urgent meteorological or navigational danger messages passed in the ship-to-shore direction.

§ 80.1121 Receipt and acknowledgement of distress alerts by ship stations and ship earth stations

(a) Ship or ship earth stations that receive a distress alert must, as soon as possible, inform the master or person responsible for the ship of the contents of the distress alert.

(b) In areas where reliable communications with one or more coast stations are practicable, ship stations in receipt of a distress alert should defer acknowledgement for a short interval so that receipt may be acknowledged by a coast station.

(c) Ship stations operating in areas where reliable communications with a coast station are not practicable that receive a distress alert from a ship station which is, beyond doubt, in their vicinity, must, as soon as possible and if appropriately equipped, acknowledge receipt and inform a Rescue Coordination Center through a coast station or coast earth station (see § 80.1115(a)(2)). However, a ship station receiving an HF distress alert must not acknowledge it but must observe the requirements of § 80.1123, and must, if the alert is not acknowledged by a coast station within 3 minutes, relay the distress alert.

(d) A ship station acknowledging receipt of a distress alert in accordance with paragraphs (b) or (c) of this section should:

(1) Acknowledge receipt of the alert by using radiotelephony on the distress and safety traffic frequency in the band used for the alert;

(2) If acknowledgement by radiotelephony of the distress alert received on the MF or VHF distress alerting frequency is unsuccessful, acknowledge receipt of the distress alert by responding with a digital selective call on the appropriate frequency.

(e) A ship station in receipt of a shore-to-ship distress alert relay (see § 80.1113(e)) should establish communication as directed and render such assistance as required and appropriate.

§ 80.1123 Watch requirements for ship stations

(a) While at sea, all ships must maintain a continuous watch:

(1) On VHF DSC channel 70, if the ship is fitted with a VHF radio installation in accordance with § 80.1085(a)(2);

(2) On the distress and safety DSC frequency 2187.5 kHz, if the ship is fitted with an MF radio installation in accordance with §§ 80.1089(a)(2) or 80.1091(a)(3);

(3) On the distress and safety DSC frequencies 2187.5 kHz and 8414.5 kHz also on at least one of the distress and safety DSC frequencies 4207.5 kHz, 6312 kHz, 12577 kHz, or 16804.5 kHz appropriate to the time of day and the geographical position of the ship, if the ship is fitted with an MF/HF radio installation in accordance with §§ 80.1091(a)(2)(ii) or 80.1093(a) (this watch may be kept by means of a scanning receiver limited to six distress and safety DSC frequencies); and

(4) For satellite shore-to-ship distress alert, if the ship is fitted with an INMARSAT ship earth station in accordance with § 80.1091(a)(1).

(b) While at sea, all ships must maintain radio watches for broadcasts of maritime safety information on the appropriate frequency or frequencies on which such information is broadcast for the area in which the ship is navigating.

(c) Until February 1, 1999, every ship while at sea must maintain, when practicable, a continuous listening watch on VHF Channel 16. This watch must be kept at the position from which the ship is normally navigated or at a position which is continuously manned.

(d) Until February 1, 1999, every ship required to carry a radiotelephone watch receiver must maintain, while at sea, a continuous watch on the radiotelephone distress frequency 2182 kHz. This watch must be kept at the position from which the ship is normally navigated or at a position which is continuously manned.

(e) On receipt of a distress alert transmitted by use of digital selective calling techniques, ship stations must set watch on the radiotelephone distress and safety traffic frequency associated with the distress and safety calling frequency on which the distress alert was received.

(f) Ship stations with narrow-band direct printing equipment must set watch on the narrow-band direct-printing frequency associated with the distress alert signal if it indicates that narrow-band direct-printing is to be used for subsequent distress communications. If practicable, they should additionally set watch on the radiotelephone frequency associated with the distress alert frequency.

§ 80.1125 Search and rescue coordinating communications

(a) The distress signal consists of the word MAYDAY, pronounced in radiotelephony as the French expression "m'aider". For distress traffic by radiotelephony, when establishing communications, calls must be prefixed by the distress signal MAYDAY.

(b) Error correction techniques, in accordance with CCIR Recommendation 625 as specified in § 80.1101, must be used for distress traffic by direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the distress signal MAYDAY.

(c) Distress communications by direct-printing telegraphy should be in the ARQ mode when ships are communicating directly to the Coast Guard or other coast stations on channels which they normally guard. Other distress communications, including those on simplex channels provided for that purpose, should be in the broadcast forward error correction mode. The ARQ mode may subsequently be used when it is advantageous to do so.

(d) The Rescue Coordination Center responsible for controlling a search and rescue operation will also coordinate the distress traffic relating to the incident or may appoint another station to do so.

(e) The Rescue Coordination Center coordinating distress traffic, the unit coordinating search and rescue operations, or the coast station involved may impose silence on stations which interfere with that traffic. This instruction may be addressed to all stations or to one station only, according to circumstances. In either case, the following will be used:

(1) In radiotelephony, the signal SEELONCE MAYDAY, pronounced as the French expression "silence, m'aider";

(2) In narrow-band direct-printing telegraphy normally using forward-error correcting mode, the signal SILENCE MAYDAY. However, the ARQ mode may be used when it is advantageous to do so.

(f) Until they receive the message indicating that normal working may be resumed (see paragraph (h) of this section), all stations which are aware of the distress traffic, and which are not taking part in it, and which are not in distress, are forbidden to transmit on the frequencies in which the distress traffic is taking place.

(g) Stations following distress traffic that are able to continue normal service may do so when the distress traffic is well established and on condition that it observes the provisions of paragraph (f) of this section and that it does not interfere with distress traffic.

(h) When distress traffic has ceased on frequencies which have been used for distress traffic, the Rescue Coordination Center controlling a search and rescue operation must initiate a message for transmission on these frequencies indicating that distress traffic has finished.

(i) In radiotelephony, the message referred to in paragraph (h) of this section consists of:

(1) The distress signal MAYDAY;

(2) The call "Hello all stations" or CQ (spoken as CHARLIE QUEBEC) spoken three times;

(3) The words THIS IS (or DE spoken as DELTA ECHO in the case of language difficulties);

(4) The call sign or other identification of the station sending the message;

(5) The time when the distress situation has ceased;

(6) The name and call sign of the mobile station which was in distress;

(7) The words SEELONCE FEENEE pronounced as the French words "silence fini".

(j) In direct-printing telegraphy, the message referred to in paragraph (h) of this section consists of:

(1) The distress signal MAYDAY;

(2) The call CQ;

(3) The word DE;

(4) The call sign or other identification of the station sending the message;

(5) The time when the distress situation has ceased;

(6) The name and call sign of the mobile station which was in distress; and

(7) The words SILENCE FINI.

§ 80.1127 On-scene communications

(a) On-scene communications are those between the mobile unit in distress and assisting mobile units, and between the mobile units and the unit coordinating search and rescue operations.

(b) Control of on-scene communications is the responsibility of the unit coordinating search and rescue operations. Simplex communications must be used so that all on-scene mobile stations may share relevant information concerning the distress incident. If direct-printing telegraphy is used, it must be in the forward error-correcting mode in accordance with CCIR Recommendation 625 as specified in § 80.1101.

(c) The preferred frequencies in radiotelephony for on-scene communications are 156.8 MHz and 2182 kHz. The frequency 2174.5 kHz may also be used for ship-to-ship on-scene communications using narrow-band direct-printing telegraphy in the forward error correcting mode in accordance with CCIR Recommendation 625 as specified in § 80.1101.

(d) In addition to 156.8 MHz and 2182 kHz, the frequencies 3023 kHz, 4125 kHz, 5680 kHz, 123.1 MHz and 156.3 MHz may be used for ship-to-aircraft on-scene communications.

(e) The selection or designation of on-scene frequencies is the responsibility of the unit coordinating search and rescue operations. Normally, once an on-scene frequency is established, a continuous aural or teleprinter watch is maintained by all participating on-scene mobile units on the selected frequency.

§ 80.1129 Locating and homing signals

(a) Locating signals are radio transmissions intended to facilitate the finding of a mobile unit in distress or the location of survivors. These signals include those transmitted by searching units and those transmitted by the mobile unit in distress, by survival craft, by float-free EPIRBS, by satellite EPRIBs, and by search and rescue radar transponders to assist the searching units.

(b) Homing signals are those locating signals which are transmitted by mobile units in distress, or by survival craft, for the purpose of providing searching units with a signal that can be used to determine the bearing to the transmitting stations.

(c) Locating signals may be transmitted in the following frequency bands: 117.975-136 MHz, 121.5 MHz, 156-174 MHz, 406-406.1 MHz, and 9200-9500 MHz.

(d) The 9 GHz locating signals must be in accordance with CCIR Recommendation 628 as specified in § 80.1101.

§ 80.1131 Transmissions of urgency communications

(a) In a terrestrial system the announcement of the urgency message must be made on one or more of the distress and safety calling frequencies specified in § 80.1077 using digital selective calling and the urgency call format. A separate announcement need not be made if the urgency message is to be transmitted through the maritime mobile-satellite service.

(b) The urgency signal and message must be transmitted on one or more of the distress and safety traffic frequencies specified in § 80.1077, or via the maritime mobile-satellite service or on other frequencies used for this purpose.

(c) The urgency signal consists of the words PAN PAN. In radiotelephony each word of the group must be pronounced as the French word "panne".

(d) The urgency call format and the urgency signal indicate that the calling station has a very urgent message to transmit concerning the safety of a mobile unit or a person.

(e) In radiotelephony, the urgency message must be preceded by the urgency signal, repeated three times, and the identification of the transmitting station.

(f) In narrow-band direct-printing, the urgency message must be preceded by the urgency signal and the identification of the transmitting station.

(g) The urgency call format or urgency signal must be sent only on the authority of the master or the person responsible for the mobile unit carrying the mobile station or mobile earth station.

(h) The urgency call format or the urgency signal may be transmitted by a land station or a coast earth station with the approval of the responsible authority.

(i) When an urgency message which calls for action by the stations receiving the message has been transmitted, the station responsible for its transmission must cancel it as soon as it knows that action is no longer necessary.

(j) Error correction techniques, in accordance with CCIR Recommendation 625 as specified in § 80.1101, must be used for urgency messages by direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the urgency signal PAN PAN.

(k) Urgency communications by direct-printing telegraphy should be in the ARQ mode when communicating directly to the Coast Guard or other coast stations on channels which they normally guard. Other distress communications, including those on simplex channels provided for that purpose, should be in the broadcast forward error correction mode. The ARQ mode may subsequently be used when it is advantageous to do so.

§ 80.1133 Transmission of safety communications

(a) In a terrestrial system the announcement of the safety message must be made on one or more of the distress and safety calling frequencies specified in § 80.1077 using digital selective calling techniques. A separate announcement need not be made if the message is to be transmitted through the maritime mobile-satellite service.

(b) The safety signal and message must normally be transmitted on one or more of the distress and safety traffic frequencies specified in § 80.1077, or via the maritime mobile satellite service or an other frequencies used for this purpose.

(c) The safety signal consists of the word SECURITE. In radiotelephony, it is pronounced as in French.

(d) The safety call format or the safety signal indicates that the calling station has an important navigational or meteorological warning to transmit.

(e) In radiotelephony, the safety message must be preceded by the safety signal, repeated three times, and the identification of the transmitting station.

(f) In narrow-band direct-printing, the safety message must be preceded by the safety signal and the identification of the transmitting station.

(g) Error correction techniques, in accordance with CCIR Recommendation 625 as specified in § 80.1101, must be used for safety messages by direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the safetysignal SECURITE.

(h) Safety communications by direct-printing telegraphy should be in the ARQ mode when communicating directly to the Coast Guard or other coast stations on channels which they normally guard. Other distress communications, including those on simplex channels provided for that purpose, should be in the broadcast forward error correction mode. The ARQ mode may subsequently be used when it is advantageous to do so.

§ 80.1135 Transmission of maritime safety information

(a) The operational details of the stations transmitting maritime safety information in accordance with this section are indicated in the ITU List of Radiodetermination and Special Service Stations and the IMO Master Plan of ShoreBased Facilities.

(b) The mode and format of the transmissions mentioned in this section is in accordance with the CCIR Recommendation 540 as specified in § 80.1101.

(c) Maritime safety information is transmitted by means of narrow-band direct-printing telegraphy with forward error correction using the frequency 518 kHz in accordance with the international NAVTEX system (see § 80.1077).

(d) The frequency 490 kHz may be used, after full implementation of the GMDSS, for the transmission of maritime safety information by means of narrow-band direct-printing telegraphy with forward error correction (see § 80.1077).

(e) Internationally, the frequency 4209.5 kHz is used for NAVTEX-type transmission by means of narrow-band direct-printing telegraphy with forward error correction (see § 80.1077).

(f) Maritime safety information is transmitted by means of narrow-band direct-printing telegraphy with forward error correction using the frequencies 4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5, 22376 kHz, and 26100.5 kHz (see § 80.1077).

(g) Maritime safety information is transmitted via satellite in the maritime mobile-satellite service using the band 1530-1545 MHz (see § 80.1077).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-342

In re Applications of

LOWREY COMMUNICATIONS, L.P. File No. BPH-881026MC

NORTH GEORGIA RADIO II, INC. File No. BPH-881026MD

RADIO CENTER DALTON, INC. File No. BPH-881026MK

For Construction Permit for a
New FM Station on Channel 283A
in Dalton, Georgia

Appearances

Denise B. Moline, Esq. on behalf of Lowrey Communications, Limited Partnership; *Gary S. Smithwick, Esq.* and *Lisa Thornton, Esq.* on behalf of North Georgia Radio II, Inc.; *Frank J. Martin, Esq.* and *Elizabeth C. Buckingham, Esq.* on behalf of Radio Center Dalton, Inc.; *Charles Dziedzic, Esq.* and *Robert Zauner, Esq.* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
RICHARD L. SIPPEL

Issued: January 29, 1992; Released: February 7, 1992

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of three applicants: Lowrey Communications, L.P. ("LCLP"); North Georgia Radio II, Inc. ("NGRI"); and Radio Center Dalton, Inc. ("RCDI"). These three applicants are competing for the award of a Commission permit to construct a new FM Station on Channel 283A at Dalton, Georgia.

2. The *Hearing Designation Order ("HDO")* DA 90-994, released August 1, 1990, reported at 5 F.C.C. Rcd 4822 (MM Bur. 1990) and published at 55 Fed. Reg. 33380 (released August 15, 1990) sets the standard comparative issues for adjudication as follows:

> (a) To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> (b) To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

The party applicants have the burdens of proving their proposals by a preponderance of the evidence. *Cuban-American, Ltd.*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990). *See also Steadman* v. *SEC*, 450 U.S. 91 (1981).

3. In the course of this proceeding, the following issues were added by the Presiding Judge against LCLP:

> (c) To determine whether Capital Radio Services, Inc. was an undisclosed principal to the application of LCLP.
>
> (d) To determine whether the structure of LCLP was a "sham" application when it was filed, or at any time thereafter.
>
> (e) To determine whether LCLP possesses the basic qualifications to become a licensee of the FM Station allocated for Dalton, Georgia.

Memorandum Opinion and Order, FCC 91M-1686, released May 22, 1991.

4. After extensive discovery the added issues were resolved in favor of LCLP in a summary decision of the Presiding Judge based on cross-motions and allied papers. *See Memorandum Opinion and Order* FCC 91M-3360, released December 2, 1991 (referred to as the "*MO&O*"). The findings and conclusions of the *MO&O* constitute a part of the ultimate findings and conclusions in this *Initial Decision*.

5. The first prehearing conference was held on October 3, 1990. The trial on the standard comparative issue was conducted on January 23, 24 and 25, 1991. A motion to enlarge issues against LCLP, filed by NGRI on January 8, 1991, was pending after the first hearing phase was concluded. The record on the standard comparative issue was closed on February 8, 1991. *Order* FCC 91M-355, released January 30, 1991. The parties were directed to file Proposed Findings of Fact And Conclusions Of Law ("PFC") on March 15, 1991, and Reply Proposed Findings Of Fact And Conclusions Of Law ("RPFC") on April 9, 1991. (*Id.*)

6. The parties presented a Joint Stipulation on signal coverage in open court on the first day of trial, January 23, 1991. The stipulation was based on the affidavit of an engineer which established that there are no significant differences in the areas and populations to be served by the three applicants in their respective engineering proposals. (Jt. Engineering Exh. 1.) Bureau counsel stated that the Bureau had no objection to the stipulation being received into evidence. (Tr. 27-28.) Since the comparative coverage issue was met by the stipulation there was no requirement for the Bureau to submit proposed findings.

7. After discovery, a second prehearing conference was held on September 23, 1991, to consider whether the issues that had been added against LCLP could be disposed of by summary decision. *Order* FCC 91M-2902, issued September 19, 1991.[1] A Motion For Summary Decision had been filed by LCLP on September 13, 1991, a date which met the time for filing such motions before the trial that had been set to commence on October 7, 1991 (FCC 91M-1686). After hearing oral argument of counsel and after considering fully the efficiencies that

might be gained, the Presiding Judge cancelled the Phase II trial and permitted summary decision on cross-motions. *See Order* FCC 91M-2919, released September 25, 1991.

FINDINGS OF FACT

8. Since the applications are mutually exclusive, a consolidated factual hearing was conducted on all issues remaining for trial wherein the parties presented evidence and conducted cross-examination. *Ashbacker Radio Corp. v. F.C.C.*, 325 U.S. 327, 333 (1945); *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956) (parties have right to present oral and documentary evidence and to conduct cross-examination).

Standard Comparative Issue

9. The matters for determination under the standard comparative issue are which of the integration proposals would, on a comparative basis, best serve the public interest |*HDO* at Para. 7(1)|; and, in light of the evidence adduced relating to that issue, which of the applications should be granted |*HDO* at Para. 7(2)|. *Policy Statement On Comparative Broadcast Hearings*, 1 F.C.C. 2d 393, 394 (1965).

Media Diversification

LCLP

10. LCLP and its general partner do not own an attributable interest in any medium of mass communications. (LCLP Exh. 2 at 1.)

NGRI

11. NGRI'S shareholders own a controlling interest in the shares of Station WBLJ(AM) in Dalton, Georgia. The stockholders have pledged to divest their stockholdings in Station WBLJ(AM) in the event NGRI receives the grant in this case. (NGRI Exh. 3.) Therefore, NGRI has no attributable media interest.

RCDI

12. RCDI is the licensee of daytime Station WLSQ(AM), Dalton, Georgia. RCDI has pledged timely to divest Station WLSQ(AM) if it is awarded the grant in this case. Such divestiture would be effected within three years after receiving FM test authority. (RCDI Exh. 1.) Therefore, RCDI has no attributable media interest.

Best Practicable Service

Lowrey Communications, L.P.

Proposed Integration

13. LCLP is a limited partnership formed and organized under the laws of Georgia. Jean S. Lowrey ("Lowrey"), its general partner, owns 100% of the partnership's voting control and 24.95% of the equity.[2] There are fourteen limited partners owning 75.05% of the equity in percentages ranging from 3.95% |11| to 7.90%|1| and 11.85%|2|. Thirteen of the limited partners have addresses in Dalton. Ms. Lowrey also resides in Dalton. One limited partner resides in Chatsworth, Georgia which is located close to Dalton. (LCLP Exh. 1 at 1-2.)

14. LCLP's application Form 301 was filed on October 26, 1988. The Certificate of Limited Partnership was signed by all of LCLP's partners on October 10-12, 1988, which was a period of time that preceded the filing of the application. (LCLP Exh. 1 at 3-23.) The Articles of Limited Partnership also were fully executed before the application was filed. (LCLP Exh. 1 at 26-52.) The Articles preclude the limited partners from exercising any control over the conduct of LCLP's business. (LCLP Exh. 1 at 37-38.) The evidence failed to disclose any incident or circumstance of control being exercised by a limited partner.

15. While Ms. Lowrey played an active role in soliciting local citizens of Dalton to invest in the venture, she was not without outside assistance of a significant nature. The facts, discussion and conclusions of the *MO&O* on summary decision, as specifically incorporated in these findings, are set forth in Paras. 16 to 22 below.

Capital's Role

16. It was found by the Presiding Judge that in September 14, 1988, forty-two days before filing, Lowrey had entered into a written "Owner/Manager Service Agreement" with Capital Radio Services, Inc. ("Capital"). (NGRI Exh. 18.) Capital's president at the time was Carl W. Hurlebaus ("Hurlebaus"). *See* fn. 1, *supra*. Capital held itself out as a general contractor that provided, for a fee, turnkey broadcast application services. Capital had determined the allocation of the Dalton FM frequency through its monitoring of Docket 80-90 allotments.

17. Before approaching Lowrey, Capital had, through its agents, made preliminary contacts with potential investors in a possible local venture group that included Lowrey's father, Pleas Smith, Jr. It was through Mr. Smith and his friend, Dr. William A. Blackman, that Capital's agents located and contacted Lowrey and solicited her to become the integrated manager of the venture.[3] Smith did not become an investor. But Blackman invested as a limited partner. Capital did not seek to acquire an equity interest.

18. Findings of the *MO&O* reflect that Capital never had an equity interest in the Dalton venture. Nor was there any evidence of an agreement to assign the station to Capital. Although Capital recommended two law firms, the evidence discloses that Lowrey contracted independently of Capital for the legal service of LCLP's attorneys. There is no evidence that Capital received copies of documents or correspondence and it is found that there was no oversight exercised by Capital with respect to legal services. It is further found that LCLP was not a front for Capital or that LCLP had filed a "sham" application. (*MO&O* at Para. 23.)

19. Capital had initially arranged for engineering. Lowrey did not contact the engineer with respect to the venture's first site, which later proved to be inadequate, and the rights to the site were assigned to Capital and then reassigned by Capital to LCLP. (*MO&O* at Para. 15.) But after the application was filed and the initial engineering work was found to be defective, Lowrey assumed full control of prosecutorial functions to correct the situation. By August 24, 1989, ten months after the

application was filed and eleven months after the Agreement was signed, Lowrey had terminated Capital's services thereby removing all vestiges of Capital's control.

20. At or about the time that Lowrey contracted with Capital, she paid Capital $5,550 by her personal check and she signed a conditional promissory note for $17,500 which ultimately was cancelled.[4] During the period of the ongoing contractual relationship, Lowrey gave Capital control over the receipt and disbursement of $82,500 which represented monies raised from limited partners. It was found:

> In view of the short period of time between contracting under the Capital Agreements and the time that the application was filed, and in view of Lowrey's reliance on Capital to obtain a site and to pay filing fees to the Commission, the evidence shows that Capital shared control with Lowrey over LCLP's application process through the application's filing on October 26, 1988.

(*MO&O* at Para. 11.) In view of commingling by Capital and the lack of any internal audit or other control procedures, the monies "escrowed" by LCLP with Capital were found to be controlled by Capital until Capital's service contract was terminated. (*MO&O* at Para. 13.) Evidence of control was found in the record presented for summary decision. Hurlebaus testified in a deposition that Lowrey had confirmed Capital's right to make non-approved expenditures. (Depo. at Tr. 206.) (*MO&O* at Para. 14.) Capital also converted accrued interest and paid, the taxes on that interest which was earned on LCLP's monies that were maintained in Capital's commingled account. (*MO&O* at Para. 14.) From these monies, Capital allocated to itself the sum of $38,500. That sum included Capital's fee of $23,050 and the payment by Capital of the Commission's filing and hearing fees and initial engineering. (*MO&O* Para. 13 n. 6.)

21. There was also evidence considered showing that Lowrey otherwise acted independently. When a second site owner was contacted, Lowrey made the contact without any assistance from Capital. Lowrey selected an air hazard consultant that had been recommended by legal counsel. (*MO&O* at Para. 15.) She also worked directly with counsel on LCLP's Form 301 application. She arranged for LCLP's loan letter. And she ultimately fired Capital. (*MO&O* at Para. 16.) In addition, it is found based on hearing evidence that Lowrey personally confirmed availability of the transmitter sites through telephone contacts with two site owners, with the site locator, and with the engineer. (Lowrey, Tr. 133-41, 334, 336.) She did not use financial services that were offered by Capital and she engaged an accountant for the preparation of the partnership's tax returns. (Lowrey, Tr. 54, NGRI Exh. 25.) She also personally prepared the construction and operating budgets. (Lowrey, Tr. 145.)

22. There was control by Capital in the venture's promotional stage over the selection of limited partner investors and the selection of Lowrey as general partner. Signed agreements of limited partners with Capital were transmitted by Hurlebaus to the investor - partners and the transmittal letter was prepared by Capital and not by Lowrey. (NGRI Exhs. 6-8, 12, 14 and 17; Lowrey, Tr. 217.) Lowrey admitted that she used a questionnaire prepared by Capital in connection with her efforts to solicit limited partners and she acknowledged that the agreements of the limited partners with Capital were prepared by Capital. (Lowrey, Tr. 88, 93.) Capital's agent, Styles E. Caldwell, accompanied Lowrey in visiting each limited partner to secure signatures and to obtain check payments. (Lowrey, Tr. 102.) Thus, Capital was an active promoter. There also was prosecutorial control exercised by Capital over the first "turnkey" engineering. Based on such evidence the Presiding Judge found:

> There was early-on control exercised by Capital through the application filing stage. But there is no evidence of Capital's participation in the prosecution of the application after it was filed on October 26, 1988. The escrow relationship was terminated on August 24, 1989, after which Capital had no connection with the venture.

(*MO&O* at Para. 16.)[5]

Quantitative Integration

23. Lowrey proposes to be integrated full time, a minimum of 40 hours per week, on a daily basis as general manager of the station. In that capacity she will be responsible for day-to-day supervision of station operations, overall format, general programming, public interest programming, sales, personnel, promotion, public relations, and accounting. She also will be responsible for compliance with all pertinent local, state and federal regulations. Station management personnel will report to Lowrey. She will hire and fire all station personnel and she will be responsible for all of the station's sales contracts. She will be responsible for ascertainment of community needs and interests in connection with the station's obligation to provide public interest and community programming, and she will establish and maintain liaisons with civic leaders and community groups in order to determine the programming needs of the community and of the specific groups in the community. (LCLP Exh. 3 at 1; Lowrey, Tr. 284.)

Broadcast Experience

24. LCLP claims credit for Lowrey's summer employment in 1970 as receptionist and traffic news announcer at Station WBLJ(AM) in Dalton. LCLP also claims credit for her broadcast summer intership in 1971 at Station WTTI(AM) as a news and public affairs announcer.[6] (LCLP Exh. 3 at 4.)

Local Residence

25. Lowrey was born in Dalton and resided there continuously until she attended college from 1968 to 1972. She resided in LaGrange, Georgia from 1972 to 1974. Thereafter, she resided in Dalton continuously to the present. (LCLP Exh. 3 at 2.)

Civic Activities [7]

26. In 1975, Lowrey served as Communications Chairman of the Dalton-Whitfield Bicentennial Commission. In 1976, she produced a slide presentation for the Cheerhaven School for the Mentally Retarded. She also served as Publicity Chairman for the Creative Arts Guild Firehouse Festival. (LCLP Exh. 3 at 2.)

27. From 1977 to 1982, Lowrey served as Secretary to the Board of Directors of the Voluntary Action Center. In 1980, she was the Public Relations Career Representative for the Dalton Rotary Club Career Education Project. From 1980 to 1983, Lowrey served on the Board of Directors of the United Way of Whitfield County. From 1982 to 1984, she served on the Board of Directors of the Whitfield County Mental Health Society. (LCLP Exh. 3 at 2-3.)

28. From 1987 to 1990, Lowrey served on the Board of Directors of the First Presbyterian Church Child Care. From 1988 to 1989, she served on the Board of Directors of the Rock Hill School Kindergarten. In 1989, she served on Project 2000: North Georgia Regional Development Center Task Force on Land Use and Housing. And from 1989 to the Present, Lowrey has been a member of the Organizing Committee for the Dalton Public Schools Alumni Association. (LCLP Exh. 3 at 3.)

29. Lowrey represents that she intends to continue her present civic activities in the community of license. Based on the dates set forth in her testimony, those present activities would be her work on the Organizing Committee of the Dalton Public Schools Alumni Association and her work with the Presbyterian Church in Dalton. (LCLP Exh. 3 at 4.)

Auxiliary Power

30. LCLP will install auxiliary generating equipment at the studio and transmitter sites to ensure continuous power in the event of power outages. (LCLP Exh. 4.)

North Georgia Radio II, Inc.

Proposed Integration

31. NGRI is a Georgia corporation with two classes of stock: voting and non-voting. Werner E. Wortsman ("Wortsman") is president, treasurer, sole director and holder of 400 shares of voting stock which comprises 100% of the voting stock. He also holds 40% of the equity of NGRI. Hansel L. Smith ("Smith") is Secretary of NGRI.

32. The other non-voting shareholders of NGRI are as follows:

Shareholder	Shares	Equity
Robert D. Fowler	150	15%
Lucia R. Smith	150	15%
Otis A. Brumby, Jr.	38	3.8%
Martha Lee Pratt Brumby	37	3.7%
Earl T. Leonard, Jr.	37	3.7%
Bebe Brumby Leonard	38	3.8%
Whitaker Trust[8]	150	15%

33. On February 13, 1989, NGRI was substituted for the original applicant, North Georgia Radio, Inc. as a new substitute corporate applicant. NGRI, the substitute corporation, was formed to enhance NGRI's comparative position. (Wortsman, Tr. 425-26.)

34. There are no contemplated future shareholders. None of the non-voting shareholders are officers, directors, or proposed to be employed by or to have any involvement in the media related activities of NGRI. (NGRI Exh. 1.) Wortsman will serve as full-time general manager of the proposed station. He will oversee construction of the station and thereafter he will supervise all aspects of the station's operations. All department heads will report to him. He will terminate any other employment or business interests he may have prior to the commencement of program tests. (NGRI Exh. 2.)

Broadcasting Experience

35. Wortsman has served as the general manager of Station WBIJ(AM), Dalton, Georgia since 1960. Through Wortsman NGRI achieves 31 years of broadcast experience.

Local Residence

36. From 1960 to the present, Wortsman has resided within the service area of the proposed station. (NGRI Exh. 2.)

Civic Activities

37. From 1988 to the present, Wortsman has been a lecturer on current events and books at the Dalton Public Library. In 1975, he was a member of the Board of Directors of the Creative Art Guild of Dalton, an organization in which he had been active from 1970 to 1980. (NGRI Exh. 2.)

38. Since 1960, Wortsman has been a member of Temple Beth El Dalton, Georgia. (NGRI Exh. 2.) There is no evidence of any related community activities or active participation in the Temple's congregational or community activities by Wortsman.

39. Wortsman was awarded the School Bell Award for 1973-74, from the Georgia Association of Educators. (NGRI Exh. 2.) There is no evidence of community services rendered by him in relation to the award. Wortsman also received an award in 1973 from the Whitfield County Board of Education and Whitfield County School Administration. (NGRI Exh. 2.) There is no evidence of community services rendered by him in relation to the award.

Auxiliary Power

40. NGRI proposes to install an auxiliary power source to insure the continuation of operations of the station in the event of an interruption of regular power. (NGRI Exh. 4.)

Radio Center Dalton, Inc.

Proposed Integration

41. RCDI is a Georgia corporation with an aggregate of 500,000 shares of authorized common stock. There are 250,000 shares which have been designated voting stock with 1 vote per share. There also are 250,000 shares which have been designated non-voting stock with no

vote. Of the 250,000 authorized voting common shares, 5,000 are issued and outstanding. Of the 250,000 non-voting common shares, 20,000 are issued and outstanding.

42. RCDI has five shareholders who hold voting and non-voting shares as follows:

Share-holders	Voting Shares	% Votes	Non-Voting Shares	% Equity
Gilbert H. Watts, Jr.	3,748	74.96%	2,502	25%
Calvin R. Means	1,000	20%	4,000	20%
Valeria W. Watts	250	5%	1,000	5%
Clifford K. Watts	1	.02%	6,249	25%
Virginia Alexandra Watts Hoyt	1	.02%	6,249	25%

43. From the filing of its application on October 26, 1988, until December 23, 1988, RCDI's shareholders held voting shares in RCDI as follows:

Share-holders	Voting Shares	% Votes	Non-Voting Shares	% Equity
Gilbert H. Watts, Jr.	6,250	25%	0	25%
Calvin R. Means	5,000	20%	0	20%
Valeria W. Watts	1,250	5%	0	5%
Clifford K. Watts	6,250	25%	0	25%
Virginia Alexandra Watts Hoyt	6,250	25%	0	25%

44. On December 23, 1988, pursuant to Commission approval of a *pro-forma* transfer of control, RCDI's shareholders exchanged certain common stock for voting and non-voting common stock. The *pro-forma* transfer of control was accomplished to improve RCDI's comparative position. (G. Watts, Tr. 583; Means, Tr. 634; G. Watts, Tr. 546.) As a result of the transfer, Clifford K. Watts ("C. Watts") and Alexandra Watts Hoyt ("Hoyt") transferred all their voting shares but one to Gilbert H. Watts, Jr. ("G. Watts"). All of the shareholders acquired non-voting stock in order to retain the same overall equity shares. (G. Watts, Tr. 543-45.) In connection with the stock transfer it was agreed on November 12, 1988, that C. Watts and Mrs. Hoyt would remain inactive principals.

45. As of the date of RCDI's application for the new FM station in Dalton, G. Watts held a power of attorney from C. Watts. (LCLP Exh. 9.) Valeria W. Watts ("V. Watts") also held a similar power of attorney from Hoyt. (LCLP Exh. 11.) The powers of attorney are not specific voting proxies for voting C. Watts' or Hoyt's shares in RCDI. But these powers do convey the power to G. Watts and to V. Watts to act as their attorney-in-fact in relation to any and all matters in which they might be interested or concerned. V. Watts, who is a Georgia attorney, testified that the power of attorney that was executed by Hoyt would constitute a general power of attorney under Georgia law. (V. Watts, Tr. 675.)

Quantitative Integration

46. G. Watts is proposed to work fulltime, i.e., forty hours or more per week, as the applicant's chief executive officer ("CEO"). In that capacity, he will be responsible for the financial, business management, and overall policy direction of RCDI. He proposes to carry out his functions in an office at the studio. (RCDI Exh. 1 at 4.) G. Watts has other business interests that must be accounted for in light of his proposed full-time integration. *See* Paras. 47 to 56, *infra*. The evidence establishes that there is no intention on the part of G. Watts to resign from any of these business commitments (G. Watts, Tr. 587) or from his civic activities. (RCDI Exh. 1; Para 73, *infra*.)

47. A family partnership doing business as Watts Agent ("Agent") is engaged in the business of owning and leasing real property. (RCDI Exh. 1 at 5.) G. Watts manages Agent's business which involves rental collections, maintenance and bookkeeping on seventy to one hundred different pieces of property. (G. Watts, Tr. 528-29.) The properties are situated thirty to sixty minutes apart in locations between Chattanooga, Tennessee and Cobb County, Georgia. None of the properties are located in the same county as Dalton. (G. Watts, Tr. 535.) RCDI claims that G. Watts spends 10 hours each week on Agent business plus 10 hours each month visiting the properties. (RCDI Exh. 1.)

48. G. Watts also owns 50% of a construction company, Bermurr, Inc. ("Bermurr"). Bermurr is a company which builds moderate income housing. Bermurr has completed fourteen units and plans to develop twenty four additional lots in the future. (G. Watts, Tr. 530.) G. Watts asserts that he spends six hours per week on Bermurr matters. (RCDI Exh. 1 at 5.)

49. G. Watts also owns a 50% interest in a related financing company, Bermurr Financial, Inc. ("Financial"). Financial is a company established specifically for the purpose of arranging FHA financing for purchasers of Bermurr's units. (G. Watts, Tr. 532.) He testified that he spends about one hour each month on matters relating to Financial's business. (RCDI Exh. 1 at 5.)

50. G. Watts also owns 50% of G & B Properties ("G&B"), a real estate partnership that owns nine rental houses in Chatsworth, Tennessee. G. Watts also manages those properties. (G. Watts, Tr. 537-38.) G. Watts testified that this management function requires less than fifteen minutes each week.

51. He also owns a 25% interest in C&W Properties, a real estate partnership which owns a commercial parcel in Chatsworth, Georgia. The property is described as consisting of a total of six buildings and a shopping center. It is under long-term lease, except for one building which carries a five-year lease. C. Watts manages the property, including the collection of rents which are sent in by the tenants. He testified that he spends about fifteen minutes each week on C&W business. (G. Watts, Tr. 537-38.)

52. G. Watts also manages ADAC, an entity that leases two buildings to the Department of Health and Human Services: one in Dalton on a twelve year lease and one in Atlanta on a ten year lease. (G. Watts, Tr. 533-34.) The two buildings are owned in part by Watts Agent. G. Watts testified that the management of the buildings takes less time than the commercial properties that are managed by Watts Agent.[9] (G. Watts, Tr. 535.)

53. G. Watts also devotes a portion of his time to attending monthly meetings of boards of directors of the following banks: Environmental Services Bank in Dalton, Georgia; the Rossville Bank and Holding Company in Rossville, Georgia; and the Community Group Bank in Chattanooga, Tennessee. (RCDI Exh. 1 at 5; Tr. 540.) The meeting in Dalton lasts a half day. The meetings and commutes to Rossville and Chattanooga take 3 1/2 hours and 2 1/2 hours respectively. (RCDI Exh. 1 at 5-6.)

54. LCLP contends that G. Watts had testified in his deposition that he did not intend to divest himself of his various business interests and real estate investments. (LCLP's PFC at 19-20.) G. Watts also spends one day each week shooting skeets and there is no evidence that he will cease or curtail that activity. (G. Watts, Tr. 600.) Yet, in his sworn testimony, G. Watts broadly stated:

> I am in a position to do, and will do what is required to fulfill my commitment to devote fulltime (40 hours a week or more) to the new FM station.

(RCDI Exh. 1 at 5.) RCDI acknowledges that G. Watts now puts in a 70 hour week but denies that he intends to add a 40 hour increment without making adjustments to the non-broadcasting endeavors set forth above. (RCDI's RPFC at 2.) There was no comprehensive plan offered in evidence and there is no indication that G. Watts intends to hire any additional personnel to assume even some of his non-broadcast activities.

55. RCDI calculates, based on its own analysis of G. Watts' testimony, that he will work 25 hours on non-broadcast business. Such a schedule, if feasible, would leave 45 hours out of a "normal work week of 70 hours or more to devote to the proposed station." (RCDI's RPFC at 2-3.)

56. RCDI also notes that G. Watts sold his interests in two radio stations in Chattanooga, Tennessee (WYVY-FM) and in Fort Payne, Alabama (WFPA-AM) and that he also sold a dairy farm and an amusement business. (RCDI's RPFC at 3-4.) However, these divestitures do not rule out the possibility of sales for business reasons having nothing to do with paring down time in order to integrate into a new FM station. For example, the radio divestitures were in connection with reducing diversification demerits. And the time and price to sell out the dairy farm and amusement businesses may have been decisions driven by business and tax reasons. There are not enough facts presented by RCDI to draw any inference from those business liquidations.

Quality Of Evidence

57. The quality of the evidence relied on by RCDI for G. Watts' integration also is taken into account. The evidence regarding a 70 hour plus work week does not clarify whether G. Watts works 5, 6 or 7 days a week, or some variation. There were no sample calendar or diary entries or related documents that might corroborate the testimony. However, since it is, in a sense, an admission against interest, the fact is established that Mr. Watts works 70 hours or more each work week and he does not intend to remove himself from any of these activities. However, the quality of the evidence becomes a significant factor because RCDI seeks findings that Mr. Watts can perform several functions at the same time and still be a full time integrated owner. For example, RCDI asserts that G. Watts spends a full business day in Atlanta on non-broadcast business but also asserts that his time spent on the road is used to conduct RCDI radio and other business by cellular phone during the round trip between Dalton and Atlanta. Such a non-documented conclusion is too speculative to draw from such broad parole estimate-type evidence.

58. RCDI also takes issue with the accuracy of evidence presented by LCLP with respect to Bermurr's projected construction projects. (*See* Para. 48, *supra*.) RCDI asserts in its Reply brief that LCLP misrepresented the evidence in asserting that Bermurr was "in the process of developing 24 lots." (RCDI's RPFC at 5.) But a review of the evidence supports LCLP's recitation of the facts. G. Watts testified:

> Q. Do you have plans for future development?
>
> A. Another 24 lots, yes, ma'am. There are 24 in the first phase and there will be another 24 in the second phase.

(G. Watts, Tr. 532.)

Additional Integration

59. Calvin R. Means ("Means") will work full time as RCDI's manager of the new FM station. Means currently works as general manager of the local AM station, WLSQ. He supervises sales and billings at the AM station. He is the AM station's program director. (Means, Tr. 632.) Means is secretary, treasurer, a director and a 20% voting and equity shareholder of RCDI. Means has testified that he will have "front line responsibility" for all station operations and policies. (RCDI Exh. 2.)

60. Means was a promoter of the venture. He initiated the process for an FM frequency search in conjunction with RCDI's consulting engineer. Then he brought the engineer's findings to the attention of G. Watts. (G. Watts, Tr. 484-85.) Means then applied for the FM station in his own name. (*Id.*) Means drafted information for the Form 301 application relating to engineering and sent drafts to the engineer for comment. (Means, Tr. 641-42.) Means found the transmitter site through a business associate of G. Watts to whom G. Watts had directed Means. (Means, Tr. 643.) But G. Watts made the contacts with communications counsel and G. Watts and V. Watts reviewed the final entries made in NGRI's Form 301. (Means, Tr. 642.) Means was acting under the direction and supervision of G. Watts.

61. V. Watts proposes to work 20 hours per week as director of public relations. She is vice-president, a director and a 5% voting and equity shareholder of RCDI. She has recently resigned her position as an attorney with a Dalton law firm. (RCDI Exh. 3.)

Broadcast Experience

62. Since 1985, G. Watts has been active in the management of Station WLSQ(AM) in Dalton, Georgia when he was president and CEO of the station's licensee. The evidence supports the finding that he worked at least 20 hours per week on station business. (RCDI Exh. 1 at 2; G. Watts, Tr. 510; Means, Tr. 630, 648-49; and G. Watts, 519-20, 520-21, 523, 590-91.) G. Watts specifically testified to his routine contacts and activities on behalf of the station, including 10 hour weekly meetings with Means.

63. Prior to divestiture in September 1990, G. Watts participated in similar activities as president and CEO of the licensee of Station WFPA(AM) in Fort Payne, Alabama. He had owned 25% of WFPA's licensee. He also served as vice-president and a director of the licensee of Station WYVY(FM), Chattanooga, Tennessee from 1988 to 1989, where he also performed similar functions. G. Watts sold his 50% interest in Station WYVY's licensee in 1989. (RCDI Exh. 1 at 2.)

64. Means has been secretary, treasurer, director, and stockholder of RCDI since October 15, 1985, when it acquired the AM Station WLSQ. Means also has served as the AM's station general manager since that date. He was involved with the operations and business of Station WLSQ twenty hours per week on a day to day basis. (RCDI Exh. 2 at 2.)

65. Means also was secretary, treasurer, director, stockholder and general manager of Station WFPA(AM) in Fort Payne, Alabama from October 1, 1985 to September 1990 when the station was divested. (*Id.*)

66. Means was sales manager at Station WALV(FM) in Cleveland, Tennessee from March to October 1984. From 1976 to 1984, Means was station manager at WWID(FM), Gainesville, Georgia. From 1973 to 1975, he was station manager and program director at Station WFNE(FM) Forsythe, Georgia. (*Id.*)

67. Means was an announcer in 1973 at Station WGAU(AM) and WNGC(FM), Athens, Georgia while he was a student at the University of Georgia School of Journalism. In 1969, while on active duty in the United States Air Force, Means was a part-time announcer at Station KITY(FM), San Antonio, Texas. Previously, he was a part-time announcer at Station WKDK(AM) while attending college in South Carolina. (*Id.*)

68. Ms. Watts, as a licensed attorney, handled miscellaneous legal matters for Station WLSQ since October 1985. (RCDI Exh. 3.) RCDI does not offer any evidence to show how her legal work was related to broadcast operations or business.

Local Residence

69. The evidence establishes that G. Watts has resided in RCDI's proposed service area from 1949 to the present, "except when [he was] away at school." (RCDI's PFC at 26-27.) RCDI does not calculate the period of time into years and does not state the number of years that G. Watts was "away at school." The Presiding Judge ascribes 8 years of absence and therefore RCDI receives credit for forty two years of local residence for G. Watts within the service area.

70. It is unclear from the evidence relied on by RCDI how long G. Watts resided in Dalton, the community of license. (RCDI's PFC at 26-27.) He has resided in Dalton at his present address at 606 Valley Drive for four years - 1988 through 1991. (*Id.*) He also resided in Dalton for twenty three years from 1949 to 1972, although no address was given. (*Id.*) From 1972 to 1977, he resided on Trickham Road in Whitfield County and from 1977 to 1978 he resided on Old Keith Road in Eton, Georgia. RCDI will not receive local community credit for the seven year period from 1972 to 1978. Therefore, it is found that G. Watts resided in the Dalton local community for a period of twenty seven years.

71. RCDI asserts that Means has lived in Dalton or in the service area since July 1977. (*See* RCDI PFC at 33.) From the evidence offered by the applicant, Means is found to have resided in Dalton since 1987, or five years. Means is found to have resided in the service area, Murray County, from 1977 to 1987, or ten years. (RCDI Exh. 2 at 1; RCDI Exh. 5 at 1; Means, Tr. 637-38.)

72. Ms V. Watts has resided in Dalton since 1939 and she receives credit for local community residence of fifty two years. (RCDI Exh. 3.) RCDI also seeks credit for years prior to 1939 when Ms. Watts resided outside Dalton but within the service area. (RCDI's PFC at 37-38.) But since there are no years specified, RCDI will receive only a slight additional credit for her unspecified service area residences prior to 1939.

Civic Activities

73. G. Watts is an active member and former officer (Sergeant at Arms) of the Dalton Rotary Club; a board member of the Dalton/Whitfield County Chamber of Commerce; a board member, and member of the Office Committee of the Whitfield County Farm Bureau; a trustee and Annual Support Committee Chairman of the Whitfield Healthcare Foundation; a board member of the Dalton Salvation Army; and an active member and former Building Fund Chairman of St. Mark's Episcopal Church in Dalton. (G. Watts, Tr. at 601; RCDI Exh. 1 at 1-2.) However, there is no period of time ascribed to any of the civic activities for which RCDI seeks credit. (*See* RCDI Exh. 1 at 1-2; and RCDI's PFC at 27.)

74. In 1987, Means was a founder of the "Cross Plains Road Rallys" on behalf of the American Cancer Society. He was personally involved in the entire course layout, was stationed at checkpoints, and generally assisted persons in entering the event. Means attended at least ten meetings of one hour duration in planning the event and he spent twenty four hours in mapping the course. (LCLP Exh. 10 at 1; RCDI Exh. 2 at 1; Means Tr.; 613-16.)

75. RCDI also claims credit for Means' membership in Dalton's Downtown Business Association, the Dalton Chamber of Commerce, League of Women Voters, Porter's Mill Foundation, Multiple Sclerosis Society Dalton Walkathon Committee and the Kiwanis Club. (RCDI Exh. 2 at 1; RCDI Exh. 5 at 1.) But there is no evidence showing that Means was actively involved in those organizations. (*Id.*)

76. Means could receive credit for serving as Moderator of a Political Forum Committee but there is no date given and no specific location is mentioned except the "surrounding areas" of Dalton. (*See* RCDI's PFC at 34.)

77. Means also receives credit for his work on behalf of Georgia's Snowman Giving Tree in 1986. He devoted four hours over several weekends to staff a booth and receive donations. He also recorded a public service announcement that was used throughout Georgia. (LCLP Exh. 10 at 3., Means, Tr. 618-20.) But there is no evidence showing whether the work was done in the community of

license or in the "surrounding areas." Nor does the evidence reflect that the public service announcement was not associated with Means' broadcasting at the station in which he was part-owner.

Daytimer Preference

78. RCDI has operated Station WLSQ(AM), a daytime station in Dalton, Georgia, since October 15, 1985. Station WLSQ(AM) operates pursuant to postsunset service authorization[10] with only 72 watts at night. (G. Watts, Tr. 487; Means, Tr. 638; RCDI Exh. 1 at 2.)

Auxiliary Power

79. RCDI pledges to install emergency generators as they are required to operate the station upon any failure of the commercial power supply. (RCDI Exh. 1 at 6; and Exh. C thereto.)

CONCLUSIONS OF LAW

80. Section 307(b) of the Communications Act requires the "fair, efficient and equitable distribution" of broadcast service and an assessment of the evidence must be made under the applicable Commission standards in determining which applicant meets the statutory standard. *See Policy Statement On Comparative Broadcast Hearings*, 1 F.C.C. 2d 393 (1965).

81. The primary concerns under the Act are: (1) maximum diffusion of control of the media of mass communications or diversification; and (2) best practicable service to the public. *West Michigan Broadcasting Co.* v. *F.C.C.*, 735 F.2d 601, 603-07 (D.C. Cir. 1984). Thus, comparative credit will be awarded to applicants which are without other media interests. The "best practicable service" standard includes the integration of ownership and management and the enhancement of such integration by local residence, civic activities, broadcast experience and minority and female gender preferences.

Comparative Proposals

82. There are no basic qualifying issues remaining against any of these applicants.[11] But where substantial questions have been raised about an integration proposal, its *bona fides* will be considered under the standard comparative issue. *See, e.g., N.E.O. Broadcasting Company*, 103 F.C.C. 2d 1031, 1035 (Review Bd 1986). Here there is substantial evidence to consider on the issue of LCLP's integration proposal insofar as the potential control held by Capital over its prosecution, and whether RCDI's proposal for integration of its CEO should be credited.

Diversification

83. Neither LCLP, nor NGRI, nor RCDI owns an attributable interest in a means of mass communications. *See* LCLP's PFC at 35-36; NGRI's PFC at 25; and RCDI's PFC at 39 (each applicant proposes the conclusion that no party should receive a diversification demerit). Therefore, no party receives a diversification credit or demerit. *Policy Statement On Comparative Broadcast Hearings, supra* at 394-95.

Comparative Coverage

84. The parties were required to submit evidence on comparative coverage because such evidence was called for under the *HDO*. A joint engineering exhibit which was received in evidence showed by substantial evidence that there were no significant differences between the proposed coverages of the areas and populations within the respective Grade B Contours and the availability of other primary aural services of Grade B or greater intensity. (*See* Para. 6, *supra*.) Accordingly, no party receives a comparative credit for a superior proposed signal coverage.[12]

Best Practicable Service

LCLP

85. LCLP filed as a limited partnership under the direction and control of Ms. Lowrey. She had achieved her status of general manager through the solicitation of Capital's agent. She paid $5,550 to Capital for a 24.95% equity interest. She participated with Capital's agent in soliciting fourteen limited partners and she used engineering services that were arranged for, paid for, and initially instructed by Capital. Lowrey also delivered or assisted in the delivery of $82,000 to Capital as an escrow agent, which monies were converted by Capital for use in a comingled account with other unrelated ventures. Capital did make distributions on behalf of LCLP. Lowrey ultimately terminated Capital's services and she obtained the return of unused funds. But there has not been a satisfactory final accounting and there remains a dispute over an unpaid sum of $20,750. Lowrey otherwise controlled the prosecution of the application, including the selection and direction of communications counsel and an engineer, the selection and negotiation of a second site, and the preparation of a budget and the securing of a financial commitment. Capital received no equitable interest in LCLP. There was no agreement to later assign the license to Capital. Capital now has no connection with or interest in LCLP's application.

86. The Commission has held with respect to two-tier applicants that the applicant has the burden to prove with reliable evidence "that nominally controlling principals will in fact exercise control." *Royce International Broadcasting*, 5 F.C.C. Rcd 7063, 7064 (Comm'n 1990), *recon. den.*, 6 F.C.C. Rcd 2601 (Comm'n 1991). The facts summarized above are sufficiently reliable to show that notwithstanding Capital's promotional involvement and its services as the applicant's agent in providing initial engineering and "escrow" services, Lowrey's conduct as general partner shows that she "will in fact exercise control." *Id.* The ultimate fact that supports the conclusion of Lowrey's full and complete control over the integration proposal is the irrefutable power that she exercised in discharging Capital in October 1989 when she became dissatisfied with Capital's services. If Capital could have exercised direct or indirect control there would have been no termination of the service contract.

87. The Presiding Judge has considered the Commission's additional criteria which support LCLP's claim for 100% integration credit: (1) Lowrey holds a significant 24.95% equity interest; (2) Lowrey's equity interest is considerably greater than any of the fourteen limited partners and there is no evidence of any limited partner exercising any control at anytime or of being in a dominant position; (3) Capital has no undisclosed ownership

interest nor a contract of understanding for a future transfer of an interest in LCLP or in any successor licensee; (4) after the promotional organization of LCLP and the execution of a formal partnership agreement in October 1988, Capital remained under a service contract as an agent of LCLP; and (5) the proposed integrated manager, Ms. Lowrey, has exercised significant control in connection with the filing and prosecution of the application, she has discharged Capital for failure of performance under a service contract, and she has shown a real prospect of continuing to exercise such control to the exclusion of Capital. However, while Lowrey was in control, Capital had the power and the potential to substantially share in that control until its contract was terminated. *Cf. Royce, supra.*

88. But Lowrey was not a front for Capital in the tradition of the typical "sham." For example, the Commission held that an applicant had failed to meet its burden of proof for a claimed integration credit when the purported controlling general partner was only a 15% equity owner and a "casual" member of the venture. *Fresno FM Limited Partnership*, 6 F.C.C. Rcd 6998 (Comm'n 1991). In that case the general partner, Cruz, had not negotiated his ownership share or the term of the limited partnership agreement. Nor had he investigated the limited partners. The limited partners also had not investigated Cruz for his character, business or financial qualifications. Also, Cruz contributed no capital and was uncertain as to the extent of his personal liability. In contrast, Lowrey paid $5,550 and signed a contingent promissory note for $17,500 in return for a 24.95% equity interest. She assisted in successfully soliciting each limited partner and each was a local Dalton resident who was acquainted with Ms. Lowrey. Lowrey also solicited checks from the limited partners before the partnership agreement was executed. Thus, neither Lowrey nor the limited partners were dealing with strangers. The affidavits of the limited partners relied on for summary decision support their continued confidence in Lowrey and attest to her continuing control. It is also noted that there was no request by LCLP's opponents to call any of the limited partners for cross-examination in Phase I.

89. Nor is there a sustainable theory to support a finding of undisclosed control by Capital to the exclusion of Lowrey because there is no evidence of an agreement to transfer control. As indicated above, Capital was an agent that was contractually obligated to LCLP to arrange for and provide specified turnkey services. Capital's services included advice on a suggested form for conducting business, i.e., limited partnership. Lowrey was solicited by Capital to purchase Capital's services and to serve as manager for the venture. She agreed to serve in that capacity on September 14, 1988. (NGRI Exh. 18.) At that point in time, the venture was still in its promotional stages. Thereafter, between September 14 and September 20, 1988, Lowrey and Capital's agent solicited fourteen investors with background questionnaires furnished by Capital and with passive investor agreements entered into between each individual and Capital. The agreements, separately executed by each investor (NGRI Exhs. 5 to 17), reflect that Capital shall obtain the Owner/Manager and that Capital shall provide turnkey application services to the Owner/Manager in connection with an application to be filed with the Commission (*Id.*). Thus, the investors parted with their investment monies in reliance on Capital's ability to select a manager and provide turnkey services. The cover letter from Hurlebaus to investors dated October 3, 1988, forwarding signed copies of the individually executed passive investor agreements, advised each investor that:

> As soon as the Owner/Manager [Lowrey][13] and the attorney for your group have structured your ownership entity (*e.g.*, limited partnership) you will be notified - - -.

(*See e.g.*, NGRI Exh. 12.) Thus, before the formation of the legal entity that intended to file an application through the efforts of an Owner/Manager and legal counsel, Capital provided pre-formation promotional and organizational services. *Cf. Coast TV*, 5 F.C.C. Rcd 2751, 2752 (Comm'n 1990) and *Magdalene Grunden Partnership*, 6 F.C.C. Rcd 5976, 5977 (Comm'n 1991) ("post-formation" involvement by passive owners is considered involvement in the application process that will be considered for comparative integration credit.) But Capital's services through October 3, 1988, were pre-formation and Capital was not an equity owner or a contemplated equity owner. Rather, Capital was only serving as agent-contractor under an Owner/Manager Agreement. Thus, the standards for assessing a comparative integration demerit under the owner-attribution principals of *Coast TV* and *Magdalen Grunden, supra* do not apply in this case.

90. Between October 3, 1988, and October 12, 1988, Lowrey had acted on the advice of Capital and she consulted with and later retained a communications counsel referred by Capital but selected by Lowrey to formulate the limited partnership. The limited partnership agreement was executed by the limited partners between October 10 and October 12, 1988. (LCLP Exh. 1 at 50.) There is no evidence of Capital's officers or agents participating in the formulation of LCLP. The only "post-formation" services rendered by Capital after October 12, 1988, involved an engineering site that Lowrey ultimately rejected as inadequate and "escrow" services for the investors' funds under an informal arrangement which facilitated comingling and conversion.[14] Those activities do not detract *de facto* from LCLP's ability to carry out its intended integration plan of 100% integration for Ms. Lowrey.

91. The Commission's standard for accepting an integration proposal as an ultimate conclusion is as follows:

> Integration credit is due when the applicant sets forth a specific integration proposal; the applicant adheres to that proposal; and there is reasonable assurance that the plan will be carried out.

Coast TV, supra at 2752, citing *Bradley, Hand & Triplett*, 89 F.C.C. 2d 657, 652 (Review Bd 1982). LCLP, through Lowrey and LCLP's communications counsel, had formulated the legal entity of a limited partnership with Lowrey as general partner before LCLP filed its application Form 301. LCLP's application proposed Lowrey as the general partner who held 100% of the voting power. There was no deviation from that proposal. To the extent that Capital's services as "escrow" agent raised any question of *de facto* control that could detract from Lowrey's 100% integration, that concern became moot by the termination of Capital by Lowrey on August 24, 1989. And there is no evidence that between October 26, 1988, and August 24,

1989, Capital exercised or attempted to exercise any decisional control over the prosecution of LCLP's application.[15]

92. But NGRI and RCDI argue that Capital was exercising *de facto* control over the payout of funds[16] to meet expenses after the "B" cut-off date, February 13, 1989. They further argue that as a holder of Lowrey's note, Capital had a stake in the success of LCLP's application. They also rely on a provision of the Agreement which prohibits any resale of any application provided by Capital without Capital's consent. (NGRI Exh. 18.)[17] The opposing parties rely on *Doylan Forney*, 5 F.C.C. Rcd 5423, 5424-25 (Comm'n 1990) which held that the interests of limited partners who had rendered legal services after the "B" cutoff would be attributable to integration. *See also Marlin Broadcasting of Central Florida, Inc.*, 65 Radio Reg. 2d (P&F) 1043-44 (Review Bd 1988) (post-trial merger requires full consideration of new agreement to determine whether there should be a down-grade in post "B" cutoff integration credit). If Capital were a limited partner, its control over the partnership's funds would have violated *Doylan Forney*. The same result should apply here where Capital was exercising unquestioned control over LCLP's funds until October 1989, a date well after the "B" cutoff, and LCLP has failed to show by substantial evidence, i.e. failed to meet its burden of proof that Lowrey directed Capital and Hurlebaus on the maintenance and disbursements of LCLP's funds. *Cf. Rebecca Boedker, supra* at 2558 (control is lost when a manager fails to have the "last say" on major decisions).

93. There is no evidence that Capital had in fact exercised any decisional control over the application. But the test applied by the Commission is whether a person "*is in a position to exercise significant control over the applicant.*" *See Royce International, supra* at 7064. (Emphasis added). As a result of the undefined arrangement whereby Capital controlled the converted partnership monies in a comingled account, done with the acquiescence of LCLP, Capital is found to have been" *in a position*" to exercise significant control. *Cf. Oliver Kelley and Mary Ann Kelley*, 6 F.C.C. Rcd _____, Review Bd *Slip Op*, FCC 91R-110, released December 16, 1991 (applicant relied on service consultant who was paid to find a channel, prepare application, locate site and provide information about equipment costs). But that case involved a situation where an applicant paid a fee to a technical consultant whose service ended with the completion of defined tasks and the consultant had no stake in the outcome. And one Board Member concurred only "reluctantly" in awarding full integration credit on that case's narrow record and in an "extremely close call." *Id.* (Separate Statement of Board Member Eric T. Esbensen). *See also Rebecca Boedker, supra* at 2558 (control is lost where manager gives up her "last say" on important matters).

94. A further review of the evidence places this case just beyond the pale of the favorable holding in *Oliver Kelley*. This is not a case where Lowrey decided to apply for the station and sought out a technical consultant to assist on specified tasks. Here, Capital was actively promoting the venture and searched out Lowrey to offer to her the job of Owner/Manager. For the privilege of serving in that capacity, Lowrey paid $5,550 in cash and signed a note payable to Capital in the amount of $17,500 which would be due in that amount only if LCLP was the winner or received a settlement. Thus, Capital had a stake in the venture's outcome while the consultant in *Oliver Kelley* had none. And Capital was active in soliciting the investors to support the venture while the consultant in *Oliver Kelley* did not assume an entrepreneurial role. Capital, not Lowrey, decided that $100,000 would need to be raised. (Lowrey, Tr. 173-74.) Capital obtained the list of prospects from Lowrey's father and an acquaintance and then Lowrey joined Caldwell in fund raising efforts. (Lowrey, Tr. 296-99, 371, 375-76.) This evidence shows Capital to be more than just a technical consultant. Capital was the primary promoter.

95. Neither the Owner/Manager Agreement signed by Lowrey nor the Passive Investor Agreements signed by the fourteen investors contained any provision which gave any of the partners a right to direct Capital on the use of funds or to require an accounting. (NGRI Exhs. 17, 18.) Rather than Capital being contractually obligated to report to LCLP, Lowrey obligated the venture to:

> provide in a timely fashion when requested by Capital full, accurate and complete information concerning your legal, technical, managerial, financial and other qualification to obtain the requested broadcast authority.

(NGRI Exh. 18 at 2.) While there is no evidence of that provision being complied with, the quoted language is evidence of the parties agreeing to place Capital "in a position to exercise significant control." *Royce International, supra.* As indicated above, Hurlebaus directed use of the monies without instructions from Lowrey and there had never been any formal documentation to evidence a "trust" or "escrow" account. (Lowrey, Tr. 314-17.)

96. In the case of *WLOX Broadcasting Co.* v. *F.C.C.*, 260 F.2d 712 (D.C. Cir. 1958), 17 Radio Reg. (P&F) 2120 (D.C. Cir. 1958), the Commission found control in a 1.5% equity owner who had loaned the applicant its construction funds and took as collateral 55% of the voting stock, although he agreed not to exercise the voting power. The court held:

> [A] stockholder [is a control principal] who is to furnish all the money to his corporation for the construction of a television station and to take part in determining the necessity for advancing it as the work progresses, and is to furnish all the money for the first year's operation, receiving weekly financial statements and giving financial advice - - -.

WLOX, 17 Radio Reg. (P&F) at 2123. By analogy, Capital had similar powers to disburse partnership funds without accounting for expenditures and in its contractual right to receive reports from Lowrey on the status of the application. (*See* Para. 95 above.) *See also Heitmeyer* v. *F. C. C.*, 95 F.2d 91,99 (D.C. Cir. 1937) (control of finances is a most effective method to control a business). More recently, the Commission has held that financial arrangements "without more" do not prove influence or control. *Dorothy J. Owens*, 5 F.C.C. Rcd 6615, 6617 (Comm'n 1990). But here, where Capital acted as entrepreneur, had contractually reserved the right to prevent an assignment of the application and to receive periodic progress reports, and had an interest in LCLP's success, the "more" required by the Commission is found to be present.

97. Lowrey and the fourteen limited partners signed agreements with Capital which were formulated by Capital. Lowrey's Owner/Operator Agreement conceded that Capital had the right to be informed on material matters involving the progress of the application and Lowrey was obligated contractually to furnish such information. There was no termination date. Capital made decisions on expending $82,000 in venture funds that Lowrey and LCLP had entrusted to Capital by parole arrangement. Capital's unfettered control over those funds went beyond the "B" cutoff and Lowrey's obligation to report to Capital under the Owner/Operator Agreement had not terminated. Such a structuring of a contract with Capital, comingled with the absolute control over the funds needed to prosecute LCLP's application that was assumed by Capital with LCLP's consent on and after the "B" cutoff, suffice to deny LCLP any credit for Ms. Lowrey's proposed 100% integration. *See Progressive Communications, Inc.*, 5 F.C.C. Rcd 7058-59 (Comm'n 1990) (integration proposal completely discounted because one with no formal interest was in a position to exercise significant control). Conversely stated, the burden of proof was with LCLP to establish that it had adhered at all times to its integration proposal. By ceding inchoate control power to Capital in the manner described above, LCLP has failed to meet its burden of proof. *See Cuban-American, Ltd.*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990).

98. While this conclusion effectively removes LCLP from further comparative consideration, there is no finding of a basic disqualification. *Cf. Ocean Pines LPB Broadcast Corp.*, 5 F.C.C. Rcd 5821, 5826-27 (Review Bd 1990) (two Members issued Separate Statements in which they advanced their views that real party-in-interest issues inherently contain subsumed element of deceit). *Cf. also Shawn Phalen*, 7 F.C.C. Rcd _____, Review Bd *Slip Op.* FCC 92R-1, released January 23, 1992, at Paras. 18-19 (real party-in-interest issue triggers basic character inquiry). LCLP is not disqualified for its failure to disclose Capital as a real party-in-interest because the facts are found in this case as establishing that LCLP and Lowrey never intended Capital to have any decisional control or influence in the station's operation and Capital has no equity in LCLP. Therefore, the evidence would not support a finding that LCLP or Lowrey had intended to deceive the Commission concerning Capital's role in the application. And the conclusion reached here to deny totally any credit for LCLP's integration proposal because Capital was left in a position "to exercise significant control over the applicant" is consistent with current Commission case law. *See Evergreen Broadcasting Company*, 6 F.C.C. Rcd 5599, 5600 (Comm'n 1991). Therefore, since it is basically qualified, LCLP's proposal will be contingently compared in the event an appellate authority rules that LCLP qualifies for the 100% quantitative integration of its proposed general partner, Jean S. Lowrey. (Para. 23, *supra*.) Related qualitative comparisons are made below.

NGRI

99. NGRI is a substitute corporation. But the substitution was made before the "B" cutoff. (Para. 33, *supra*.) NGRI's application, as amended, continues to meet the requirements under Section 73.3573(b).[18] The original shareholders remain the same. The only change is with respect to Wortsman now holding 100% of the voting stock. The change was made to allow NGRI to claim 100% integration for Wortsman's position as full-time general manager. Wortsman previously had owned 40% of the voting stock. The increase in voting shares does not effect his equity ownership which remains at 40%. NGRI may structure its proposal in a manner that it believes is most likely to prevail in a comparative proceeding. *KIST Corp.*, 102 F.C.C. 2d 288, 292 n.9 (Comm'n 1985), *aff'd sub nom. United Telecasters, Inc.* v. *F.C.C.*, 801 F.2d 1436 (D.C. Cir. 1986).

100. There is no question raised about the timeliness of the amendment. And the Commission has permitted an applicant to increase an individual's ownership to 100% by post-designation amendment. *Marlin Broadcasting of Central Florida.*, 5 F.C.C. Rcd 5751, *recon denied*, 5 F.C.C. Rcd 7446, *aff'd* _____ F.2d _____ (D.C. Cir. January 7, 1992). In that case, the Commission affirmed the Review Board's conclusion to treat a husband and wife as *de facto* 50%/50% general partners notwithstanding a "B" cutoff amendment that structurally gave the wife 95% of the ownership. *Marlin Broadcasting*, 4 F.C.C. Rcd 7945, 7949 (Review Bd 1989). But the amendment was not ruled to be technically illegal as a result of an increase of the female's ownership from 51% to 95%. *Id.* And there is no evidence in this case that Wortsman is *de facto* less that a 100% manager-owner insofar as control is concerned. Therefore, NGRI, through Wortsman, is entitled under the principle of law analyzed in *Marlin Broadcasting* to 100% credit for its integration proposal.

RCDI

101. RCDI, however, is not entitled to any integration credit for Gilbert H. Watts, Jr. The preponderance of the evidence fails to show that Mr. G. Watts has a plan in place for extricating himself from his interests in and duties to Watts Agent, Bermurr, G&B Properties, C&W Properties, ADAC, Hasty & Watts and Y&W Properties businesses, as well as his memberships on the boards of directors of three banks in Georgia and Tennessee, so that he could devote full-time to the integrated management of RCDI's proposed station as its proposed "CEO." (Paras. 46-56, *supra*.) Nor is the evidence sufficiently complete or precise to determine how G. Watts would fully integrate into station business as a "CEO." Therefore, RCDI has failed to meet its burden of proof. *See Cuban-American, Ltd., supra*.

102. G. Watts asserts that he works 70 hours per week. There is no evidence to refute his claim. He does not intend to withdraw from the active management of these interests. But there is not any substantial evidence offered that documents how he is able to consistently manage all the properties and attend interstate bank board meetings. There must be times when some responsibilities are deferred while more pressing matters are addressed. There has been no plan adopted that would substitute some other person for G. Watts in meeting such *ad hoc* problems in the management of these other extensive business interests. Thus, there is no reasonable assurance established by RCDI that G. Watts will work 40 hours or more each week at the station. (*Id.*) Nor does the quality of the evidence offered by G. Watts convince the fact-finder that G. Watts can fulfill all of his business duties, even if he reduces these to 25 hours per week, and still be able to meet a weekly commitment of 40 hours or more to the station's management. (Paras. 55, 57-58, *supra*.)

103. The story told by G. Watts also has intrinsic inconsistencies. He denies that he plans to develop 24 new housing plots through Bermurr even though he testified that he had such a plan. (Para. 58, *supra.*) And RCDI claims to be entitled to full-time integration credit for G. Watts' peripatetic management style while the hands-on day-to-day management will be performed by Calvin R. Means who also is now the full-time manager of the applicant's local AM station. (Paras. 59-60, *supra.*) Means is proposed to manage both stations on a full-time basis until the AM station is divested. Such divestment may take as long as three years from the start of broadcasting on the FM signal. (Para. 12, *supra.*) Yet there is no plan offered to show how his present full-time management duties at Station WLSQ, which would continue while the FM station was constructed and for three years after test signal, can be reduced to permit Means to meet a second full-time "first line responsibility." (Paras. 12, 59, 64, 78, *supra.*)

104. Ms. Valeria W. Watts is a 5% owner. RCDI is entitled to credit for V. Watts' commitment to work 20 hours per week as the station's director of public relations. (Para. 61, *supra.*) But the uncertainties, inconsistencies and inconclusiveness of the G. Watts and Means proposals requires the rejection of 95% of RCDI's integration. Under Commission precedent, applicants have an affirmative burden of establishing how they will make a specific record showing of how outside interests will be accommodated. *See Kennebec Valley TV, Inc.*, 2 F.C.C. Rcd 1240, 1241-42 (Review Bd 1987).

105. The evidence offered by RCDI pertaining to the proposed involvements of G. Watts and Means does not make such a showing under *Kennebec Valley, supra.* With respect to G. Watts' promise to reduce outside business interests, from 70 hours to 25 hours, it has been held:

> The Board's routine practice is to find that generalized promises to "diminish" the time spent on a significant business interest is insufficient. |Citations omitted.| In that regard, a blanket pledge to hire more employees and diminish hours spent is not enough: we have no way to check afterwards, and were we to accept such promise where significant business interests remain, all comers would receive full-time credit.

Naguabo Broadcasting Company, 6 F.C.C. Rcd 912, 924 n.63 (Rev. Bd. 1991), *aff'd*, 6 F.C.C. Rcd 4879, 4880 (Comm'n 1991). The need for proof beyond promises and projections was emphasized in a later case wherein the Review Board held:

> - - - integration credit has been denied to applicants with significant interests because, quite obviously, "the very existence of |any| other interests renders questionable |the integration| commitments in the absence of an additional showing by the applicant of the reliability of its integration proposal . . . ." *Blancett Broadcasting Co.*, 17 F.C.C. 2d 227, 230 (Rev. Bd 1969) (emphasis added). |Subsequent citations omitted.|

Pleasure Island Broadcasting, Inc., 6 F.C.C. Rcd 4261, 4165 (Review Bd 1991). The Review Board has recently applied these authorities in denying an applicant any integration credit where the applicant had

> - - - made no weighty showing at all, let alone a persuasive one, as to how he will spend 50-60 hours per week managing a fledgling station in Orange Beach, while devoting (he says "only") 15 hours a week to another significant business concern - - -.

Id. See also Shawn Phalen, supra at Paras. 29-31.

106. In the final analysis, the Commission has held that "|a|pplicants have the burden of proof to establish how they will effectuate their integration proposals." *Cuban-American Limited*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990); *Julia S. Zozaya*, 5 F.C.C. Rcd 6607 (Comm'n 1990) (applicant retaining business interest denied integration credit). *See also Berryville Broadcasting Co.*, 70 F.C.C. 2d 1, 11-12 (Review Bd 1978). In this case, RCDI has offered no "demonstrative evidence" or "convincing plan" and has made no "weighty showing" to overcome the presumption that the retention of active rental properties will interfere with the 40 plus hours work week that G. Watts proposes to spend on station business. *See Blancett Broadcasting, supra* and *Pleasure Island Broadcasting, supra. See also Naguabo Broadcasting Company*, 6 F.C.C. Rcd at 4880 (need for detailed accounting noted where other business interests readily lend to freely dividing time between a local business and the station business). In this case, where Mr. G. Watts expects to be out and around managing rental properties and planning for the development of 24 tracts of land, and attending directors' meetings in two states, this stricture of the Commission in *Naguabo* is particularly applicable. And with respect to Mr. Means, there is no plan to show how he will be a "front-line" manager for two stations while the FM station is being constructed and for three years after the test signal is operative. Therefore, RCDI receives credit only for V. Watt's integration proposal for only 20 hours per week.

Contingent Comparative Conclusions

107. If LCLP was entitled to 100% integration credit it would be the clear comparative winner. Ms. Lowrey would receive an enhancement for her female gender. With the exception of seven years, she lived in Dalton all of her life. (Para. 25, *supra.*) During that time, she served as secretary to a board of volunteers, she was a member of a board, committee member and representative for various local civic organizations. (Paras. 26-29, *supra.*) She is entitled to recognition for thirteen years of local civic activity. NGRI is the next ranked applicant with 100% integration with a lesser record of civic involvement. Wortsman receives credit for five years of civic work as reader and lecturer at the local Dalton Public Library and as a member of the board of directors of the Art Guild in 1975. (Para. 37, *supra.*) He receives no credit as a member of Temple Beth El because there is no evidence that he was involved in any community oriented Temple activities. *Cf. Newton Television, Ltd.*, 3 F.C.C. Rcd 553, 556, (Review Bd 1988) (civic credit awarded where community activities were ancillary to church membership). Wortsman's civic involvement is more remote in time than are the activities of Ms. Lowrey. Nor is Wortsman

entitled to credit for awards received in 1973 where there is no evidence offered of the nature of the services that related to the awards. *Id.* Thus, Lowrey's almost lifetime local residence coupled with her substantially better record of civic activities, as enhanced by her feminine gender, outweigh the enhancement to NGRI for Wortsman's superior broadcast service.[19]

108. On the further contingency that RCDI is awarded credit for the integration of Mr. Means as a full-time general manager, notwithstanding his interim dual employment as manager of Station WLSQ, his 20% interest in RCDI would be added to V. Watts' 2.5% interest[20] to achieve only a 22.5% integration credit which is far below NGRI's 100% integration. There is no need to consider further the involvement of G. Watts' 75% interest since the Review Board has held categorically that non-specific commitments will not be fully credited. *Vacationland Broadcasting Co., Inc.*, 97 F.C.C. 2d 485 (Review Bd 1984), *Shawn Phalen, supra.*

109. Even if RCDI were awarded only a slight credit for G. Watts' 75% interest, it would not approach the full 100% integration awarded to NGRI. RCDI would receive comparative preference for owning an AM "daytimer" notwithstanding the change in ownership by virtue of the corporate reorganization that was effected on December 23, 1988. (Paras. 42-44, *supra.*) In order to qualify for an AM "daytimer" preference, the licensee/applicant must have owned the AM station for three continuous years prior to the designation of the FM application for hearing. *See FM Broadcast Assignments*, 101 F.C.C. 2d 638, 646 (Comm'n 1985). The ownership of AM Station WLSQ remained substantially the same with the same shareholders and *de facto* control by G. Watts. It was not materially changed less than two years before the case was designated for hearing. Therefore, RCDI would receive a daytimer credit based on substantially the same reasoning as applied above in accepting NGRI's reorganization. *See* Paras. 99-100, *supra.* But without a 100% integration credit, RCDI still finishes last. And RCDI would receive a comparatively lesser credit for local residence/civic involvement because it failed to prove the relevant dates of G. Watts' civic activities. *See* Para. 73, *supra.* Lowrey's local residence of 31 years, coupled with significant civic involvement and her female preference would exceed the credit awarded for G. Watts' 42 years of local residence without attributing those years to civic activities. And RCDI's broadcast experience receives less credit than LCLP's local residence/civic activities/female preference.

Summary Conclusions

110. All three applicants receive equal credit for diversification and auxiliary power. LCLP receives no integration credit as a matter of law and RCDI receives only a 2.5% integration credit for V. Watts. Therefore, NGRI is the comparative winner with 100% integration. Alternatively, if LCLP were awarded 100% integration it would be the winner because of Ms. Lowrey's long-term local residence coupled with her comparatively substantial civic activities and female preference. NGRI would finish second and RCDI would receive a third place ranking because of its failure to prove with specificity how G. Watts' 75% ownership interest would be integrated or how Means would be a "front-line" manager for two stations.

ORDER

Based on the foregoing, IT IS ORDERED that unless an appeal from this *Decision* is taken by a party, or unless the Commission reviews this *Decision* on its own motion,[21] the applications of Lowrey Communications, L.P. (File No. BPH-881026MO) and Radio Center Dalton, Inc. (File No. BPH-881026MK) ARE DENIED.

IT IS FURTHER ORDERED that the application of North Georgia Radio II, Inc. (File No. BPH-881026MD) for authority to construct a new FM Station on Channel 283A in Dalton, Georgia IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FOOTNOTES

[1] There was extensive discovery conducted between the adding of the issues on May 22, 1991, and the conference of September 23, 1991. Records of non-parties were subpoened, depositions of Mr. Carl W. Hurlebaus, Styles E. Caldwell and others were taken, and follow-up efforts were made to decipher deposits and withdrawals in a commingled checking account. *See Order* FCC 91M-2693, released September 3, 1991, and *Order* FCC 91M-2853, released September 17, 1991. In the interest of obtaining *all* relevant evidence, the computerized billing data of LCLP's counsel were ordered disclosed to opposing counsel. *Id.*

[2] LCLP seeks a gender preference for Ms. Lowrey's integration into management.

[3] The evidence is not sufficiently clear to conclude that Capital rather than Lowrey selected the limited partnership structure. There was an undated document generated by Capital to the LCLP investors which advised that the "partnership" would contract with Capital "to turnkey the preparation and prosecution of the application for the new FM broadcast frequency allocated to Dalton." *See MO&O* at Para. 9. Lowrey contends that she had approved the partnership structure before that communication was sent by Capital. LCLP limited partners substantially supported Lowrey's contention in their after-the-fact affidavits offered in support of LCLP's motion for summary decision. *Id.* But there are no contemporaneous documents to show that Lowrey made the selection of the limited partnership vehicle without advice from Capital.

[4] The note's obligation was contingent on success in obtaining a grant or a payoff by settlement that exceeded the face amount of the note. The terms of the note provided:

> This Note shall at once become due and payable, at the option of the holder hereof, upon the occurrence (1) the receipt of cash proceeds to your account (from settlements, mergers, buyouts, etc.) in excess of $17,500, or (ii) the receipt of operating profit distribution from the Station (which shall not include employment compensation) in excess of $17,500, or (iii) the sale of all or substantially all of the assets of the Station or the construction permit for the Station, provided that such sale results in net proceeds to your account in an amount exceeding this note. In the event that the applicant group is unsuccessful in obtaining an FCC construction permit for a new FM broadcast license in the community for which it applies,

> then Jean S. Lowrey may satisfy payment of this note in full by paying the sum of one-hundred dollars ($100) within thirty (30) days of a Final Order by the FCC denying the Construction Permit to your group. No interest or other consideration shall be required.

(North Georgia Exhibit 19.) It appears from the face of the note (NGRI Exh. 19) that Ms. Lowrey was paying from personal funds only her initial investment of $5,550.

[5] While the added issues regarding Capital's alleged control over the application were resolved in favor of the applicant LCLP, the adverse parties were permitted to file Supplemental Points and Authorities on the question of integration credit to be awarded to LCLP. LCLP also was permitted to file Supplemental Opposing Points and Authorities. *See Order* FCC 91M-3457, released December 16, 1991. Those matters are considered in the Conclusions of Law below. *See* Paras. 85-98, *infra*.

[6] These activities occurred within LCLP's service area. (*See* LCLP Exh. 3 at 2-3.)

[7] Lowrey pledges to leave her employment as Executive Director, Dalton Education Foundation, Inc., if LCLP receives the grant. (LCLP Exh. 3 at 5.)

[8] Trustees of the Whitaker Trust are Lewis S. Whitaker and Myrna N. Whitaker.

[9] There is a general reference in a summary of LCLP's PFC to another venture called "Hasty & Watts." (*See* LCLP's PFC at 19.) There is no reference to a "Hasty & Watts" in RCDI's hearing exhibit. But the testimony of G. Watts refers not only to "Hasty & Watts" but also to "Y & W" Properties. (G. Watts, Tr. 542.) These business operations of G. Watts cannot be determined with a sufficient degree of reliability.

[10] *See* §73.99 of the Commission's Rules, 47 C.F.R. §73.99.

[11] As indicated above, Paras. 3-4, the issues added by the Presiding Judge on the basic qualifications of LCLP, i.e., whether Capital was an undisclosed real party-in-interest and whether LCLP was a "sham" applicant, were resolved earlier by the Presiding Judge's Summary Decision. *See MO&O* (FCC 91M-3360), released December 2, 1991 and Paras. 16-22, *supra*.

[12] The stipulation was based on an affidavit of a qualified engineer who affirmed, under oath, that he reviewed the engineering sections of the respective applications, that he plotted the 60 dBu field strength contours of the three competing applicants on a single 1980 census map, and that he concluded from his review that there are no significant differences in the areas and populations proposed to be served. (Jt. Eng. Exh. 1.)

[13] By October 3, 1988, Lowrey was serving as the Owner/Manager since she had signed an agreement to serve in that capacity on September 14, 1988. (NGRI Exh. 18.) She also had made her payment of $5,050 and she had contingently committed herself to pay an additional $17,500. (NGRI Exhs. 18, 19.)

[14] The use of the investors' funds to receive and retain earned interest was a form of conversion. The monies were never intended to belong to Capital and as a *quasi* escrowee-fiduciary Capital had a duty to hold accrued interest for the benefit of the owners of the funds. But Lowrey testified that the escrow arrangement was made informally and as manager she was satisfied to rely on Capital's services without a formal escrow agreement until such services were terminated by Lowrey on October 26, 1988.

[15] NGRI and RCDI set forth excerpts from the Judge's Summary Decision ruling (FCC 91M-3360) that in certain respects appear to be taken out of context. *See* Supplemental Points and Authorities filed on December 20, 1991, at 1-2. The *MO&O* should be read in full and there will be no attempt here to place matters asserted by NGRI and RCDI in context.

[16] It was found in the *MO&O*:

> There is no evidence that Lowrey reviewed or was asked to approve any of the above disbursements before they were made by Capital. - - - Hurlebaus explained to Lowrey, "Here's what we typically do, is that okay?" Lowrey answered: "Yes", go ahead." (*MO&O* at 6.)

[17] The text of the Agreement states:

> You agree not to resell or provide any application provided by Capital to any other person or entity, without the express written permission of Capital.

(NGRI Exh. 18 at 2.) This language is ambiguous. It could mean that only in cases where Capital actually prepared an application would there be a prohibition of an assignment without Capital's consent. But it was Capital's boilerplate language which on its face does appear to contemplate Capital's control over assignments. Lowrey had the burden of proof to show that the prohibition did not apply and Lowrey offered no proof. Therefore, it is found that Capital had retained a contractual right to approve or disapprove of any replacement of Lowrey as Manager. *Cf. Rebecca Boedker*, 6 F.C.C. Rcd 2557 (Comm'n 1991). However, the right was never exercised and it ceased to exist with Capital's contract termination.

[18] Section 73.3573(b) [47 C.F.R. §73.3573(b)] provides that a new file number will be assigned to an application for a new station "where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed." There was no objection to the amendment. Nor was any attempt made to have a new number assigned to NGRI's application while it was on the processing line. Nor would any such objection have succeeded because the original parties to the application, the same NGRI shareholders, continue to retain more than a 50% ownership.

[19] It is noted that NGRI has presented proof of Wortsman's 31 years of local residence while LCLP has only presented evidence of Lowrey's almost lifetime residence in Dalton. Ms. Lowrey's age was never established and therefore her lifetime residency does not prove a definitive number of years. However, it is noted that she claims broadcast experience for a student intern job in 1971. (Para. 24, *supra*.) Assuming that she was a college student of about twenty years of age, her current age would approximate forty years. Based on that estimate and an opportunity for the Presiding Judge to observe Ms. Lowrey testifying, it is concluded that she resided in Dalton about the same number of years as Wortsman, i.e., 31 years. Any further need for precision is mooted by the comparison of local residence and civic activities as a "unified comparative factor" under which Lowrey receives a substantial preference. *See Rebecca L. Boedker*, 6 F.C.C. Rcd 2557, 2559 (Comm'n 1991).

[20] Ms. Watts' will only spend 20 hours per week at the station. Therefore, an appropriate reduction of credit would be 50% of her full-time value as an integrated principal. This is a computational measure of integration credit and the Commission approves of such analysis. *See Omaha TV 15, Inc.*, 4 F.C.C. Rcd 730, 733-34 (Comm'n 1988). Since the other applicants receive 100% integration credit under the primary and the contingent analyses, there is no decisional need in this case to apply the more exacting HHI computational analysis.

[21] This *Initial Decision* shall become effective and this proceeding shall be terminated 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-365

In re Applications of

THRESHOLD COMMUNICATIONS — File No. BPH-890501ME

GARRY E. and K. DIANE THOMPSON — File No. BPH-890501MI

For Construction Permit for a
New FM Station on Channel 288A
in Copperopolis, California

APPEARANCES

Donald *Martin* and *Spencer W. Weisbroth* on behalf of Threshold Communications; *Jerrold Miller* on behalf of Garry E. and K. Diane Thompson; *Larry A. Miller* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE WALTER C. MILLER

Issued: January 30, 1992; Released: February 5, 1992

1. Two applicants remain in the running for a new FM station on Channel 288A in Copperopolis, California:[1] Threshold Communications and Garry E. and K. Diane Thompson.[2] The Chief, Audio Services Division designated one factual issue for hearing (the standard comparative issue) along with the ultimate issue. *See* 55 F.R. 38749 published September 20, 1990.

2. Thus, evidence was adduced on the following issues:

> "To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> To determine in light of the evidence adduced pursuant to the specified issues [sic], which of the applicants should be granted, if any.

3. As part of standard comparison, engineering coverage evidence was introduced. *See* 55 F.R. 38749 *supra*, at para. 4. We held the Prehearing Conference on November 26, 1990, an Evidentiary Admission Session on December 6, 1990, and the hearings on January 24, & 25, 1991. The evidentiary record was closed on March 27, 1991. *See* FCC 91M-1107.

4. Threshold, the Thompsons, and the Mass Media Bureau filed Proposed Findings of Fact and Conclusions of Law on Aril 5, 1991. [3] Threshold filed Reply Findings on April 12, 1991 and the Thompsons filed their Reply Findings on April 15, 1991.

Issue 1 - the Standard Comparative Issue Description of the Applicants

5. *Threshold Communications* is a general partnership made up of two individuals, each of which own a 50% equity interest: James T. Arata and Douglas A. Wulff. Each has an equal voice in governing the partnership; they share the costs and the work, and each is entitled to half the profits.

6. Arata and Wulff have been partners since 1982. In 1982 they started operating a cable audio service, Creek Cable Radio KCRK. Since 1986, they have operated the KCRK School of Broadcasting. The Cable Audio Service is a laboratory for the broadcasting school students. Both the school and the Cable Audio Service are profit making enterprises. The California State Department of Education has approved the school.

7. Threshold will divest itself of KCRK (both the school and the Cable Audio Service) if their Copperopolis CP is granted.

8. *The Thompsons*. Garry E. and K. Diane Thompson are a general partnership. The partnership has two partners. Garry E. and K. Diane Thompson. They're husband and wife. Garry Thompson is a 40% general partner while his wife Diane is the 60% general partner.

9. Diane owns 60% of the application because she is female and has the greater knowledge of radio, and is in better position to have the controlling voice on major, long term decisions. However, with his 40% ownership, Garry Thompson will be the proposed general manager. That is because he has a more substantial business and sales background.

Diversification of Mass Media

10. Since *Threshold's* divestment pledge is being credited (Finding 7 *supra*.) neither Threshold, nor either of its partners holds any ownership interest in any medium of mass communications. The Thompsons also do not own or control, either individually or as a partnership, any medium of mass communications. So neither applicant is entitled to a diversification preference.

Best Practicable Service

11. *Comparative Coverage*. Threshold proposes to serve 22,975 people over an 1,813 sq. km. area within their 1 mV/m contour. The Thompsons will serve 22,412 people over 1,868 Km.

12. During daytime hours, all of the areas that each applicant would serve already receive five or more aural services. During nighttime hours, each would provide coverage to underserved areas; i.e., areas served by fewer than five aural services. However, neither proposes to serve white or grey areas.

13. The following chart sets out the extent to which each applicant will provide a new service to underserved areas during nighttime hours in uncommon service areas:

CHART

Applicant	Third	Fourth	Fifth
Threshold	15 (8.1 sq. Km)	17 (13 sq. Km)	210 (98 sq. Km)
Thompson	--	60 (65 sq. km)	69 (86 sq. Km)

14. Based on the foregoing (Findings 11-13 *supra.*), certain intermediate findings are warranted. Neither applicant is entitled to an overall coverage preference. They both will serve about the same population and area. The difference between Threshold and Thompson, 563 people (2.5%) is insignificant.

15. Similarly, regarding service to underserved areas and populations, neither applicant warrants a preference. The third, fourth, and fifth nighttime service that Threshold proposes is insignificant, as is Thompson's.

16. Neither applicant is entitled to a preference based on comparative coverage.

17. *Quantitative Integration-Threshold.* Threshold claims 100% quantitative integration. They intend to integrate both of their general partners into the proposed station's day-to-day operations on a full-time basis. James Arata, a 50% equity holder, will devote not less than 40 hours to being the proposed station's general manager. In that capacity he will hire and supervise all department heads, and devise, determine and oversee the implementation of all station policies.[4] Arata will also be doing the station's engineering although he doesn't have a college degree in engineering (Tr. 25).

18. James Arata was born on June 12, 1954. He lives at 2712 Walnut Boulevard in Walnut Creek, California sharing a residence with his partner, Douglas Wulff. Walnut Creek is outside Threshold's proposed service area. He intends to move to Copperopolis if Threshold's CP is granted.

19. Arata has a business and management background. Since 1982 he has been the General Manager and Chief Engineer of Creek Cable Radio KCRK (see Finding 6 *supra.*). He is co-founder of the KCRK School of Broadcasting, and is currently the school's Executive Director. He is also an instructor. He teaches radio broadcasting courses. In order to carry out his integration proposal, Arata will withdraw from all other business pursuits which would interfere with his general manager's duties.

20. Although James Arata has not participated civically within Threshold's proposed 1 mV/m contour, he does have some broadcast experience. The following chart summarizes that experience.

Station	Time Period	Type of Employment	Position Held
KVSH(FM) Concord, CA	6/72 - 6/73	Part-time	Disc Jockey, Engineer
KNBA(AM) Vallejo, CA	5/73 - 6/74	Fulltime	Disc Jockey, Music Director, Program Director
KDFM(FM) Walnut Creek, CA	6/73 - 10/74	Fulltime	Disc Jockey
KKIS(AM) Pittsburgh, CA	10/74 - 8/75	Fulltime	Disc Jockey, Engineer
KUIC(FM) Vacaville, CA	8/75 - 8/76	Fulltime	Disc Jockey, Music Director, Program Director
KIOI(FM) San Francisco, CA	4/76 - 7/82	Fulltime	Announcer, Disc Jockey

21. Since he is a White, non-Hispanic male, James Arata can claim no qualitative comparative enhancements.

22. Threshold also intends to fully integrate its other 50% general partner, Douglas A. Wulff into their proposed day-to-day operation. Wulff will be the Program Director and devote not less than 40 hours on a full-time permanent basis to that position. In that capacity he will hire and supervise all on-air talent, select and schedule the station's programming, and will devise, determine, and oversee the implementation of the station's programming policies. He will also handle the traffic and billing and the program log (Tr. 100-101). Programming the music will be Wulff's main function (Tr. 100; also see Footnote 4 *supra.*

23. Douglas A. Wulff was born on July 29, 1955. He lives at 2712 Walnut Boulevard in Walnut Creek, California with his partner, James Arata. Walnut Creek is outside Threshold's proposed service area. If Threshold's application is granted, he will move to Copperopolis, sharing a residence with Arata (Tr. 123).

24. Douglas Wulff has a business and management background. Since 1982 (parttime until August 1983 and full-time since then), he has been the Operations Manager of Creek Cable Radio KCRK. He is co-founder of the KCRK School of Broadcasting, and is currently the school's Director of Training. He is also an instructor at the school. In order to carry out his integration pledge Wulff will withdraw from all other business pursuits which will interfere with his job as Program Director at the proposed station.

25. Although Douglas Wulff has not been civically active within Threshold's proposed 1 mV/m contour, he does have some broadcast experience. The following chart summarize that experience.

CHART

Station	Time Period	Type of Employment	Positions Held
KVSH(FM) Concord, CA	6/72 - 6/73	Parttime	Disc Jockey
KNBA(AM)	7/73 - 8/7	Parttime	Disc Jockey
Vallejo, CA	8/77 - 6/78	Fulltime	Disc Jockey
KKIS(FM) Pittsburg, CA	10/78 - 8/83	Fulltime	Disc Jockey, Production Work,
KDFM(FM) Walnut Creek, CA	10/78 - 8/83	Fulltime	News,[5] Production, Public Affairs

26. Since he is a White, non-Hispanic male, Douglas Wulff can claim no qualitative comparative enhancements.

27. Before turning to the Thompson's comparative showing, there are some further comparative facts about Threshold that deserve mentioning because they provide a backdrop to Threshold's activities. These facts have limited value, however, because they were never fully developed by Threshold's opponent.[6]

28. As previously noted (Finding 6 *supra*.), Arata and Wulff have been partners since 1982. Originally the partner operated under the name "Contra Costs FM." It was in June 29, 1988 that they changed the name to "Threshold Communications." It was also in June 1988 (some 11 months before they filed for Copperopolis) that Threshold filed an application for a new station at Seaside, California (Tr.48, 103). Initially both Arata and Wulff planned to work at the Seaside station on a regular basis (Tr. 103). After they filed for Copperopolis they apparently changed their minds. They filed for Copperopolis on May 1, 1989.

29. At his deposition, Arata indicated that he wasn't aware whether Wulff had intended to work at the Seaside station (Tr. 56-57). But at the hearing Arata changed his tune. He said that he had discussed with Wulff his (Wulff's) plans to work at the Seaside station. He further stated that the two of them had "definitely" discussed the decision to abandon any plans to work at Seaside (Tr. 52-53).

30. Threshold let its Seaside application be dismissed by failing to pay the hearing fee or otherwise responding to the Hearing Designation Order. They filed nothing indicating their intent to withdraw their Seaside application. The record is silent on *when* the Seaside application was dismissed, and whether there was a period of time when Threshold faced two financial obligations; i.e., one for Seaside and one for Copperopolis.

31. *Quantitative Integration - The Thompsons*. The Thompsons claim 100% quantitative integration. They intend to integrate both their general partners into their proposed stations day-to-day operations on a full-time basis. First they propose that Garry Thompson who holds 40% of the partnership equity will be the proposed station's General Manager and Sales Manager. He will be full-time, working a minimum of 40 hours a week.

32. In his capacity as general Manager Garry Thompson will be in charge of all aspects of the station's operations. He will approve all policy and personnel matters, and have the final say on all matters involving the station's day-to-day operation. As Sales Manager, Mr. Thompson will directly supervise the sales department and make all the policy decisions in that department.

33. Garry Thompson was born on October 2, 1962. He lives at 2317 Rose Avenue, Modesto, California, with his wife and general partner, K. Diane Thompson. The Modesto residence is about 28 miles from Copperopolis, outside the proposed 1 mV/m contour.[7]

34. Mr. Thompson currently works as a salesman for Jorgenson and Company, a distributor of industrial safety equipment. Jorgenson and Company are located in Modesto, California. He will resign that position, or any other employment he may have so he can devote full time to the radio station.

35. Mr. Thompson has never resided in Copperoplis or the proposed service area and so can claim no civic activity. Although he has never been employed at a broadcast station, he has done volunteer work from time to time at KDJK(FM). KDJK is owned by his father-in-law and mother-in-law, Joe and Ann Gross (Tr. 136).

36. He has aided various KDJK promotions: i.e., the American Cancer Society Drive, the Chili Cook-off, and voter registration. He has delivered prize packages, picked up commercial dubs for the station, delivered and picked up promotional banners, and built radio shelves for the station. He has helped out the chief engineer from time to time, refueled the diesel generator, painted the transmitter building, changed the air filter in the building, and changed the nitrogen tank which pressures the main transmitter line.

37. Since Garry Thompson is a White, non-Hispanic male, he can claim no qualitative comparative enhancements.

38. The Thompsons also intend to fully integrate their 60% general partner, K. Diane Thompson, into the proposed station's day-to-day operation. She will work a minimum of 40 hours as Station Manager of the proposed station. In that capacity she will set the policy for the station's internal operations; i.e., the business aspects (billing, accounting, traffic), programming and news, subject to the General Manager's approval. She will be directly supervising, hiring, and firing all staff in these areas. She'll be in charge of preparing and implementing station budgets, and implement the station's EEO program.

39. K. Diane Thompson was born July 3, 1968. She lives at 2317 Rose Avenue, Modesto, California with her husband and general partner. The Modesto residence is about 28 miles from Copperopolis, outside the proposed 1 mV/m contour.[8]

40. Since 1986 Ms. Thompson has been employed at FM station KDJK, Oakdale, California. KDJK is owned by her parents, Joe and Ann Gross. From 1986 - 1988, she served as a receptionist. She handled the telephones, sent and received facsimiles, filed, prepared monthly billing contracts, typed up sales proposals and sent out weekly station play lists.

41. Starting in 1988 she became the Assistant Office Manager. As such she makes and enters weekly deposits, processes computerized billing, answers account receivable inquiries, and assists the traffic manager with entering sales orders. She also assists the program director by ordering compact discs and cassettees from record companies and helping with promotions. In September 1990, for example, she helped with a promotion at a local mall to register votes in San Joaquin County.

42. She helps the production director when needed; she takes copy over the telephone; and she assists the public service director. When the office manager is unavailable, she assumes those duties.

43. K. Diane Thompson will resign her position at KDJK, and any other employment she may have if the Thompsons are awarded the Copperopolis CP.

44. Since Mrs. Thompson has never resided in Copperopolis or the proposed service area she can claim no civic activity. However, she does claim and will be awarded those qualitative comparative enhancements due a White, non-Hispanic female.

45. *Auxiliary Power*. Both Threshold and The Thompsons will install auxiliary power equipment at their proposed transmitter sites.

CONCLUSIONS OF LAW

Issue 1: The Standard Comparative Issue

1. Two mutually-exclusive applicants seek authority to operate a new FM station on Channel 288A in Copperopolis, California: Threshold Communications (Threshold) and Garry E. and K. Diane Thompson (The Thompsons). They will be analyzed under the criteria set

out in the Commission's *1965 Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, as modified by subsequent Review Board and Commission decisions.

2. Pursuant to that *Policy Statement* we will direct our analysis toward the Commission's two primary comparative objectives: (1) selecting the applicant that will offer the greatest diffusion of control of mass communications media; and (2) selecting the applicant that will offer the best practicable service to the public.

3. *Diversification of Mass Media*. Neither applicant (nor their principals) holds any attributable broadcast interests. *See* Finding 15 *supra*. So the Commission's first primary comparative objective will have no bearing on the outcome of this contest.

4. *The Best Practicable Service*. In deciding which applicant will offer the best practicable service, we will consider four basic criterion: (1) we will decide whether either applicant should be preferred because of a superior areas and population proposal (comparative coverage); (2) the extent each will integrate their ownership into the day-to-day management of the proposed station (quantitative integration); (3) the attributes that each integrated owner will bring to that day-to-day management (qualitative integration); and (4) whether the degree of quantitative and qualitative integration is enhanced by minority and/or female ownership.

5. Attribute (3), Qualitative integration, embraces such factors as local residence, participation in civic affairs, past education and business experience, past broadcast experience, and auxiliary power.

6. *Criterion - 1: Comparative Coverage*. Neither applicant is entitled to a preference based on comparative coverage. *See* Findings 11-16 *supra*. So that has no bearing on the outcome.

7. *Criterion - 2: Quantitative Integration*. Both the Thompsons and Threshold claim the maximum allowable quantitative integration, 100%. The Thompsons have established that the proposed duties of both Garry Thompson (40%) and Diane Thompson (60%) are policy-making and supervisory in nature. They therefore qualify for integration credit. Moreover, Threshold hasn't challeged the authenticity of those duties. So the Thompsons will be credited with 100% quantitative integration.

8. Sustaining Threshold's 100% quantitative claim is not nearly that clear cut. Arata and Wulff plan a 24-hour-a-day *automated* operation. There will be no announcing. On the other hand Arata has testified that if there will be announcing, he and Wulff will be the live announcers, one in the morning and the other during the evening. Each shift will last three or four hours. Such duties hardly qualify as policy-making or supervisory duties.

9. Threshold will have no clerical employees, and they hope to arrange for an answering service to answer the telephone on a trade-out basis. So there won't be many people to supervise or make policy for.[9] Moreover, Wulff says that he will perform the non-policy making, non-supervisory tasks of handling traffic, billing, and the program log.

10. Still Threshold's 100% quantitative claim will be credited. Arata and Wulff will locate their station in the *Commission-allocated* community of Copperopolis. Copperopolis has a projected 1990 population of 194. *See* Footnote 1 *supra*. In fact, Calaveras County, where Copperopolis is located, had a 1980 population of 20,710. One can discern the "Mom and Pop" aura of both operations, by simply looking at their total proposed coverage. The Thompsons propose to serve 22,412 people and Threshold 22,975 people. A station operation with a large or even medium-sized staff will have real difficulty becoming financially viable in a market the size that the Commission's allocation contemplates. Threshold's 100% quantative integration claim will be credited.

11. *Criterion - 3: Qualitative Integration*. Neither the Thompsons nor Threshold's principals (Arata and Wulff) are local residents, and neither applicant can claim a preference for *participation in civic affairs*. Wulff's and Arata's pledge to move to Copperoplis (population - 194) entitles them to a very slight preference for future residence.

12. Arata and Wulff have some *business and management experience*, along with some vintage (1972-1982) but limited (disc jockey) *broadcast experience*. *See* Finding 19-20 and 24-25 *supra*. However, the quality of that experience is overshadowed by the more recent and varied *broadcast experience* that Diane Thompson (60%) has obtained at KDJK, Oakdale, California. *See* Findings 40-42 *supra* And although Garry Thompson's recent broadcast experience he has obtained as a volunteer at KDJK doesn't add much to their qualitative position (see Findings 35-36 *supra*.), the Thompsons are entitled to a preference of average intensity for *broadcast experience*. Neither applicant obtains a preference for *auxiliary power*.

13. On balance, the Thompsons' are preferred under the qualitative integration criterion. Their preference for superior broadcast experience outweighs Threshold's slight preference for future residence.

14. *Criterion - 4: Minority and / or Female Enhancement*. Since both Arata and Wulff are White, non-Hispanic males, their 100% quantitative integration is not enhanced at all. *See* Findings 21 and 26 *supra*. On the other hand the Thompson's 60% general partner and the proposed station manager, Diane Thompson is entitled to the comparative enhancements due a White non-Hispanic female. So her 60% equity ownership and past broadcast experience will be so enhanced.

Issue 2: The Ultimate Issue

15. Under the Ultimate Issue we must determine, in the light of the evidence adduced under the standard comparative issue, which of the two applications should be granted.

16. Since neither applicant is entitled to a diversification of mass media preference, the case turns on who will offer the best practicable service to the public. The Thompsons are clearly superior. Their broadcast experience preference enhanced by 60% partner Diane Thompson's female status is clearly superior to Threshold's very slight preference for future residence.

17. Thus, the ultimate conclusion under designated issue 2 is that Garry E. and K. Diane Thompson is preferred over Threshold Communications because Garry E. and K. Diane Thompson will offer the best practicable service to the public in Copperopolis, California and vicinity.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews the decision on its own motion, Threshold Communications' application (BPH-890501ME) IS DENIED; and Garry E. and K. Diane Thompson's application (BPH-890501MI) IS GRANTED.[10]

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTES

[1] Copperopolis is located in Calaveras County. According to Calaveras County authorities in Sun Andreas, Copperopolis had a projected population of 194 as of 1990.

[2] Two other applicants were dismissed early-on. Chester P. Coleman was dismissed on September 18, 1990 (FCC 90M-2954). Copperopolis Broadcasting Company was dismissed the same day (FCC 90M-2953).

[3] Of course, the Bureau's evidence was limited to the engineering coverage issue. *See* Finding 3 *supra*.

[4] Threshold plans an automated 24-hour-a-day operation. There would be no announcing (Tr. 36). At his deposition, Arata said that he and Wulff would be live announcers, one in the morning, the other in the evening. Wulff says that until after the November 1990 depositions, they had no real concrete programming ideas (Tr. 99). They would use part-time announcers to tape commercials for broadcast via the automation system (Tr. 42-43). At the beginning the station would have no clerical employees. They hope to arrange with an answering service to answer the telephone and to trade out that service. The idea of trading out an answering service for telephone calls didn't arise until after the depositions. But Threshold doesn't know if there are any answering services in the Copperopolis area (Tr. 102). Threshold's new service will be handled by a part-time employee (Tr. 26) based on information taken from local newspapers (Tr. 33, 97). They will not subscribe to a wire service such as AP or UPI.

[5] Wulff's newswork at KDFM consisted primarily of taking items off the wire service printer and reading them; i.e., rip and read (Tr. 96).

[6] This record stands out in contrast to the record developed in the Swanton, Ohio proceeding, MM Docket 88-432. There an applicant's opponent (Welch Communications) fully developed the background to a double filing. The most The Thompsons were willing to do was file a "Suggestion For Enlargement Of Issues." *See* FCC 91M-1092, released March 27, 1991.

[7] Both Garry Thompson's and his wife's pledge to move to Copperopolis was stricken from The Thompsons' direct case exhibits. Since they hadn't so pledged in their integration statements, they constituted belated comparative upgrading attempts.

[8] *See* Footnote 7 *supra*.

[9] The Review Board is understandably and properly disenchanted with such penny-pinching proposals. *See Pepper Schultz*, 4 FCC Rcd 6393 (Rev. Bd. 1989).

[10] If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, the Initial Decision will become effective 50 days after its public release. *See* 47 CFR 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 6, 1992

REQUEST FOR PREEMPTION OF STATE DETERMINATIONS OF PERCENTAGE OF INTERSTATE USE

Advanced Telecommunications Corporation (ATC) has filed a petition requesting the Commission to preempt state regulation of interexchange carrier (IXC) Percentage of Interstate Use (PIU) for local exchange access services, to the extent inconsistent with federal regulation, and to assert exclusive primary jurisdiction to resolve controversies that require a determination of an IXC's PIU.

ATC states that the BellSouth Telephone Companies are attempting in civil litigation in state court to collect access charges from ATC in amounts that cannot be determined without reference to established federal principles for allocating usage between interstate and intrastate jurisdictions. ATC claims that the state litigation could remove interstate access charge issues from the purview of the Commission. According to ATC, if the Commission does not preempt the state proceeding and assert exclusive jurisdiction over PIU issues, inconsistent decisions in non-expert forums will result in a breakdown of the Commission's uniform access charge regulatory framework.

Interested parties may file comments on or before **March 30, 1992** and reply comments on or before **April 30, 1992** with the Secretary, Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554. A copy should be sent to Peggy Reitzel, Common Carrier Bureau, Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554 and to the Downtown Copy Center, the Commission's contractor for public records duplication, 1114 21st Street, N.W., Suite 140, Washington, D.C. 20037. The petition is, and comments and reply comments will be when filed, available for inspection and photoduplication in Room 544, 1919 M. Street, N.W., Washington, D.C. 20554. Copies may additionally be obtained from the Downtown Copy Center.

For further information contact Patrick Donovan at (202) 632-4047 or Michael Carowitz (202) 632-6363.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Order to Show Cause
to Michiana Metronet, Inc.
for Point-to-Point station WLN896
at Fort Wayne, Indiana and
Point-to-Point station WLK941 at
Columbia, Indiana

ORDER TO SHOW CAUSE

Adopted: January 13, 1992; Released: February 6, 1992

By the Chief, Domestic Facilities Division:

1. Before the Commission for consideration is the motion for show cause order filed by James A. Simon (Simon), licensee for Multipoint Distribution Service (MDS) station WHD358 on channel 2A at Ft. Wayne, Indiana.[1] Simon requests that his license be modified by adding two megahertz to his existing authorization for MDS channel 2A so that the authorization could become authority for an MDS Channel 2 station. To accommodate the increase by two megahertz for MDS channel 2, Simon also requests the modification of the license of Michiana Metronet, Inc. (Michiana) for common carrier point-to-point station WLN896 at Ft. Wayne, Indiana. Simon requests that an order be issued for Michiana to show cause why its license should not be modified as requested. Simon states that he will reimburse Michiana for all reasonable costs associated with the requested modifications of station WLN896.[2] After appropriate modifications are made to point-to-point station WLN896, then it would be possible to grant a waiver of Section 21.901(c) of the Commission's rules, 47 C.F.R. Sec. 21.901(c), and grant a modification adding two megahertz for MDS station WHD358.

2. Michiana filed an Opposition to Motion for Order to Show Cause. Michiana states that Simon's argument that reallocation of this spectrum for video entertainment is in the public interest is merely a conclusory assertion.

> It is respectfully submitted that the current use of providing an ancillary backbone network for the Fort Wayne nonwireline cellular system better serves the public interest than would an additional wireless cable channel, especially in view of the number of full 6 MHz channels already available for video in the 2 GHz band.

Michiana's Opposition to Motion for Order to Show Cause at 4. Michiana also asserts that "[a]ccommodation of Simon would disrupt service to Michiana's public subscribers." *Id.* According to Michiana," [i]t would also affect future growth and expansion of the system, and the interference potential... can not be adequately assessed in advance." *Id.* at 4-5. "There are thus serious factual, legal, and policy questions as to whether the proposed license modification would be in the public interest." *Id.* at 5.

3. Simon filed a reply to Michiana's opposition, arguing: (1) Simon has located and coordinated in-band displacement spectrum for Michiana's station WLN896 so that there is no issue as to whether cellular or video entertainment service serves a greater public interest; (2) the alternative spectrum will not cause harmful interference and will not prevent future growth; (3) "contrary to Michiana's suggestion, other wireless cable channels are not 'alternatives' to using MDS Channel 2A in a 6 MHz configuration" (Simon's Reply at 3); (4) the local wireless cable operator needs to accumulate as many full-time 6 MHz channels as possible in order to compete with the local 37-channel cable television company; [3] (5) because Michiana also has a profit motive in operating its cellular system, it is not in a position to attack Simon because he has a profit motive; (6) "[n]otably, Michiana ignores entirely the portions of the Motion that point out that the Commission has adopted a mandate to assist wireless cable's development so that it can form a competitive restraint on cable" and the fact that Simon's proposal serves that mandate (Simon's Reply at 4); and (7) Michiana's opposition presents no facts to support its claim of adverse impacts [4] and fails to allege "that Simon cannot make those 'numerous changes,' that a plan to avoid 's ervice interruptions' cannot be implemented, or that Michiana has plans superior to and that will be thwarted by Simon's proposal." Simon Reply at 5. Simon also states that "[t]he obvious solution to Michiana's claimed fears is adopting the order requested by Simon, which requires Simon to make the changes at Simon's expense and without disrupting Michiana's cellular operations." *Id.* Simon concludes by asserting that the perfunctory nature of Michiana's opposition demonstrates that issuing the proposed show cause order will not waste the Commission's resources. Simon Reply at 7.

4. The public interest would be served by consideration of a MDS Channel 2 authorization to replace the current MDS Channel 2A authorization for Ft. Wayne, Indiana. Authorization of MDS Channel 2 would allow the accumulation of an additional channel for video entertain-

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[1] The coordinates for Simon's MDS Channel 2A at Ft. Wayne, Indiana are: Lat. 41 deg. 06 min. 25 sec. N., long. 085 deg. 11 min. 46 sec. W.

[2] These expenses to be reimbursed would include costs for preparation of a modification application, costs for prior frequency coordination, the filing fee for a modification applications, the filing fee for a certification of completion of construction, cost for necessary replacement equipment, and costs for testing of replacement equipment.

[3] Instructional Television Fixed Service (ITFS) channels are only available on a part-time basis, if the ITFS licensee can be persuaded to lease its excess capacity. If the licensees of each MDS, MMDS and Operational Fixed Microwave H-channel station can be persuaded to lease, a maximum of 12 channels are available for full-time leasing by the local wireless cable operator. "All available channels are vital components to a system that must compete against entrenched cable that can always offer many more channels." Simon's Reply at 3-4.

[4] "Michiana has not presented a shred of evidence that microwave congestion in |Ft. Wayne| will ever develop." Simon Reply at 5.

ment programming to be distributed by the local wireless cable operator. MDS channel 2A is only four megahertz of spectrum. Six megahertz of spectrum currently is necessary to provide an MDS video signal, together with its associated audio signal. MDS channel 2 is six megahertz of spectrum.

5. The Commission has noted recently the public interest benefits to be derived from enhancing the competitiveness of MDS in today's multichannel video marketplace, which is increasingly characterized by systems using an increased number of channels to deliver video entertainment programming. *Second Report and Order, Wireless Cable Order*, 6 FCC Rcd 6792 (1991) ("By affording wireless cable operators a more accommodating regulatory framework, we aim to enhance the potential of wireless cable as a competitive force in the multichannel video distribution marketplace.... The *Report and Order* increased the availability of MDS channels for use in wireless cable systems. ..."*Id.)* ; *Order on Reconsideration, Wireless Cable Order*, 6 FCC Rcd 6764 (1991)("The purpose of this rulemaking proceeding was to facilitate the provision of 'wireless cable" service to the public. ..."*Id.); Further Notice of Proposed Rulemaking, Wireless Cable Order*, 5 FCC Rcd 6472 (1990); *Report and Order, Wireless Cable Order*, 5 FCC Rcd 6410, 6411 (1990)("This result should enhance the viability of wireless cable service and its stature as a competitive force in the multichannel video delivery marketplace." *Id.); Notice of Proposed Rulemaking*, 5 FCC Rcd 971 (1990)("Further, because MDS offers the public a viable alternative to cable television service, it holds the potential to function as a competitive spur to coaxial cable system operators. We have elsewhere acknowledged the increasing importance of such competition and continue to believe that we should take all possible steps to encourage and facilitate competitive multichannel video delivery systems." *Id.) See MMDS Allocation Order*, 94 F.C.C. 2d 1203 (1983)("The principal factor that most of the MDS entities commenting in this proceeding cited as limiting the growth of MDS is the lack of a multichannel capability." *Id.* at 1220. "In areas that are or are about to be cabled, competition from multichannel MDS may spur cable systems to build promised systems faster, improve existing systems, and keep prices low." *Id.* at 1228.)

6. According to Simon, Michiana's point-to-point operations could be accommodated if its station WLN896 was modified: (1) to change from frequency 2162 MHz to frequency 2178 MHz from Ft. Wayne to Columbia, using horizontal polarization; and (2) to substitute a Mark Antenna Products Model MHP-21AH96D (left-handed feed) antenna as the transmitting antenna directed to Columbia; and if its station WLK941 was modified: (3) to change from frequency 2162 MHz to frequency 2128 MHz from Columbia to Hilgas, Indiana, using horizontal polarization. Simon alleges that it is possible to change the point-to-point stations' frequencies without disruption of service to Michiana's existing cellular customers. *See also* 47 C.F.R. Sec. 21.100, 21.107, and 21.109.

7. Therefore, an *Order to Show Ca use* is directed to Michiana Metronet, Inc., licensee of common carrier point-topoint station WLN896, at Ft. Wayne, Indiana, and licensee of common carrier point-to-point station WLK941, at Columbia, Indiana, as to why its license for station WLN896 should not be modified, at the expense of Simon, to specify operation at frequency 2178 MHz, instead of operation at frequency 2162, and to specify, at the expense of Simon, use of a Mark Antenna Products Model MHP-21AH96D (left-handed feed) antenna, directed to Columbia from its station WLN896 at Ft. Wayne, Indiana, and as to why its license for station WLK941 should not be modified, at the expense of Simon, to specify operation at frequency 2128 MHz, instead of operation at frequency 2162 MHz. As licensees in the public interest, the parties are encouraged to proceed cooperatively to accommodate these changes. [5]

8. Accordingly, IT IS ORDERED that pursuant to Section 316(a) of the Communications Act of 1934, as amended, Michiana Metronet, Inc., licensee of station WLN896 at Ft. Wayne, Indiana and licensee of station WLK941 at Columbia, Indiana SHALL SHOW\ CAUSE why its license for station WLN896 SHOULD NOT BE MODIFIED to specify operation at frequency 2178 MHz from Ft. Wayne to Columbia, using horizontal polarization, instead of operation at frequency 2162 MHz, and also SHALL SHOW CAUSE why its license for station WLN896 SHOULD NOT BE MODIFIED to specify use of a Mark Antenna Products Model MHP-21AH96D (left-handed feed) transmitting antenna, directed to Columbia, Indiana, and SHALL SHOW CAUSE why its license for station WLK941 SHOULD NOT BE MODIFIED to specify operation at frequency 2178 MHz from Columbia to Hilgas, using horizontal polarization, instead of operation at frequency 2162 MHz.

9. Pursuant to Section 1.87 of the Commission's Rules, Michiana may file a written statement, not later than **March 16, 1992,** showing with particularity why its specified licenses should not be modified as proposed in the *Order to Cause*. [6] The Commission may require Michiana to submit additional information. If Michiana raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information submitted, the Commission may grant any or all of the modifications, deny any or all of the modifications, or set the matter of any or all of the modifications for hearing. If no written statement is filed on or before **March 16, 1992,** Michiana will be deemed to have consented to the modifications as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned modifications are found to be in the public interest.

10. IT IS FURTHER ORDERED that the Secretary of the Commission SHALL SEND, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order to Show Cause* to the licensee of common carrier point-to-point stations WLN896 and WLK941, Michiana Metronet, Inc., at 421 Fernhill Avenue, Fort Wayne, Indiana 46808.

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[5] If the parties are unable to reach an accommodation through negotiations, it is our present intent to proceed with consideration of Michiana's written statement filed in response to this show cause order, if any.

[6] If any, James A. Simon's reply comments must be filed on or before March 20, 1992.

11. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Domestic Facilities Division Public Reference Room, Room 6218, 2025 M Street N.W., Washington, D.C.

12. This order is issued pursuant to Sections 0.291 and 1.87 of the Commission's Rules, 47 C.F.R. Secs. 0.0291 and 1.87, and is effective on its release date.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 6, 1992

CC Docket No. 90-571

AT&T FILES ADDITIONAL COMMENTS ON INTERSTATE COST RECOVERY ALTERNATIVES FOR TELECOMMUNICATIONS RELAY SERVICES

American Telephone and Telegraph Company (AT&T) has filed in the referenced Docket with the Commission a comment entitled "COST RECOVERY ALTERNATIVES FOR TRS."

Interested parties may file comments concerning the AT&T comments on or before **March 16, 1992.** All filings should reference CC Docket No. 90-571, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990.

Copies of the comments and any subsequently filed documents in this matter may be obtained from Dockets Center, Room 230, 1919 M Street, N.W., Washington, D.C. 20554 or Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036, (202) 452-1422.

For further information, contact Linda Dubroof at (202) 634-1808.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and
Telegraph Company

Application for Authorization under Section 214 of the Communications Act of 1934, as Amended, to Acquire and Operate Capacity in Digital Submarine Cable Systems (a) Between Kuantan, Peninsular, Malaysia and Kota Kinabalu, Malaysia (b) Between and Among Brunei Darussalam, Malaysia and the Philippines, and (c) Between Brunei Darussalam and Singapore

File No. I-T-C-91-200

ORDER AND AUTHORIZATION

Adopted: January 28, 1992; Released: February 6, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T) pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS ORDERED that application File No. I-T-C-91-200 is GRANTED and AT&T is authorized to:

a. acquire and operate 150 jointly assigned Minimum Assignable Units of Ownership (MAUOs)[1] (half-MAUOs) of capacity in a digital submarine cable system, the Kuantan-Kota Kinabalu Cable System, between Kuantan, Peninsular, Malaysia and Kota Kinabalu, Malaysia;

b. acquire and operate 161 jointly assigned MAUOs of capacity in the Brunei-Philippines section of a digital submarine cable system, the Brunei-Malaysia-Philippines Cable System, between and among Brunei Darussalam, Malaysia and the Philippines;

c. acquire and operate 150 jointly assigned MAUOs of capacity in the Malaysia-Philippines section of the Brunei-Malaysia-Philippines Cable System;

d. acquire and operate 150 jointly assigned MAUOs of capacity in a digital submarine cable system, the Brunei-Singapore Cable System, between Brunei Darussalam and Singapore[2];

e. lease appropriate extension facilities; and

f. use the facilities defined in a, b, c, d and e above, in connection with appropriately authorized transpacific submarine cable facilities, to provide AT&T's regularly authorized services between the United States and Brunei Darussalam, Malaysia, and Singapore.

2. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] A MAUO is defined in the Construction and Maintenance Agreements of the Brunei-Malaysia-Philippines, Kuantan-Kota Kinabalu and Brunei-Singapore Cable Systems as a unit of ownership designated as the minimum, practical unit of ownership, consisting of 73,684,656 bits per second. A MAUO consists of 64,000 usable bits per second and the additional 9,684,656 bits per second required for multiplexing purposes.

[2] The Kuantan-Kota Kinabalu, Brunei-Malaysia-Philippines, and Brunei-Singapore Cable Systems are referred to collectively as the ASEAN Cable Systems. AT&T's percentage interests in these cables are 1.98%, 3.99% and 2.97% respectively.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Aeronautical Radio, Inc. and the Air Transport Association of America — File No. I-S-P-90-002

Provision of Aeronautical Services via the Inmarsat System

Communications Satellite Corporation — File No. I-T-C-90-085

Application for Authority to Provide Limited Aeronautical Services within the U.S. via the Inmarsat System

MEMORANDUM, OPINION AND ORDER

Adopted: January 21, 1992; Released: February 6, 1992

By the Commission:

I. INTRODUCTION

1. On November 7, 1989, Aeronautical Radio, Inc. (Arinc) and the Air Transport Association of America (ATA) jointly filed a three-part request for partial waiver of the Federal Communications Commission's (Commission) *Report and Order* in CC Docket No. 87-75, Provision of Aeronautical Services via the International Maritime Satellite Organization (Inmarsat) System.[1] In this *Memorandum, Opinion and Order*, we will consider only part (a), dealing with a waiver to permit interim domestic aeronautical mobile satellite service (interim service request). Only one entity, American Mobile Satellite Corporation (AMSC), opposed the interim service request. For reasons stated below, we find that a temporary grant of part (a) of the waiver request is warranted. We defer consideration of part (b) dealing with permanent service to a later time and consolidate it with the British Telecom Petition for Reconsideration. We also dismiss as premature part (c) dealing with restoration of service. The dedicated domestic system is at least several years from completion, and the restoration needs of customers of the future dedicated system are still speculative and arrangements for those needs can be better developed at a later time. Finally, as discussed below, we temporarily grant in part the Communications Satellite Corporation (Comsat) application, File No. I-T-C-90-085, requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, (Act) and the International Maritime Satellite Communications Act, to provide satellite capacity to implement interim domestic aeronautical mobile satellite services via Inmarsat space segment pursuant to part (a) of the Arinc/ATA waiver request.

II. BACKGROUND

2. In 1987, the Commission initiated a Rule Making proceeding in CC Docket 87-75 to determine how international aeronautical mobile satellite services[2] via Inmarsat will be provided in the United States. [3] The radio spectrum that was to be used for this service is known as a portion of the L-band. The L-band frequencies are divided into the lower L-band, 1530-1544 and 1626.5-1645.5 MHz, and the upper L-band, 1545-1559 and 1646.5-1660.5 MHz. The U.S. Table of Frequency Allocations in Section 2.106 of the Commission's Rules specifies how frequencies may be used.[4] It allocates the lower L-band only to maritime mobile satellite service (MMSS), but the Commission has granted a temporary waiver to allow provision of aeronautical mobile satellite service (R) (AMSS(R))[5] and mobile satellite service (MSS) in the lower L-band.[6][7] The upper L-band is allocated to AMSS(R) and MSS, with a requirement that in the portion of the band 1545-1549.5 and 1646.5-1651 MHz, MSS is a secondary service, and in the portion 1549.5-1558.5 and 1651-1660 MHz, MSS communications is co-primary but must give priority and real time preemptive access to AMSS(R). Inmarsat non-AMSS(R) communications such as airline passenger communications must therefore be provided as a mobile satellite service and comply with co-primary or secondary status or provide priority and real time preemptive access to AMSS(R), as applicable.[8]

3. The first generation Inmarsat satellites operate in the frequency bands of the lower L-band, while the second generation space segment operates in the lower L-band plus 3 MHz of the upper L-band at 1545-1548 MHz and 1646.5-1649.5 MHz.[9] In the *Inmarsat Report and Order*, the Commission held, *inter alia*, that it would authorize the use of Inmarsat space segment in the U.S. for communications to aircraft that are in international flight, both for AMSS(R) functions and non-AMSS(R) functions. The Commission authorized the use of Inmarsat aeronautical services through Comsat via U.S. aeronautical earth stations for aircraft in flight: (1) from the U.S. to a foreign point; (2) from a foreign point into the U.S.; and (3) between any two foreign points. The Commission further determined that aircraft in international flight may also use the domestic MSS system, "to the extent the coverage area of that system permits" and "[a]ircraft in flight between two U.S. domestic points may use only the domestic mobile satellite system for satellite communications to the extent the coverage area of that system permits."[10] Although the Commission has granted AMSC a license to construct, launch and operate the sole first generation domestic MSS system in the upper L-band,[11] the Commission recognized that it would require at least three to four years for the domestic MSS licensee to construct and launch its first satellite for domestic MSS. Thus, in a related decision, the Commission stated that it was willing to explore options for interim domestic mobile satellite service when applications were filed seeking such authority and were subject to public notice and comment.[12]

4. The Arinc/ATA waiver request asks for a partial waiver on both an interim and permanent basis of certain of the Commission rules which restrict service by Inmarsat to solely "international" aeronautical satellite communications. Arinc and ATA request that the Commission allow aeronautical satellite services to be provided through Comsat via Inmarsat as follows: (a) on an interim basis to aircraft in flight between two domestic points (until such time as the domestic MSS system licensee can

provide services over its own dedicated mobile satellites); (b) on a permanent basis to aircraft in flight on intra-domestic legs of scheduled flights with international points of origin and/or destination (*e.g.*, a Chicago to New York leg of a scheduled Chicago to London service); and (c) on a permanent basis for the restoration of domestic service in the event of a failure of the domestic MSS licensee's facilities.[13] In this *Memorandum, Opinion and Order*, we will grant the interim service component of the waiver request, that is, part (a), defer consideration of part (b) and consolidate it with the British Telecom Petition for Reconsideration, and dismiss part (c) as premature.

5. In support of the interim service request, Arinc and ATA state that the Commission's grant of interim service via Inmarsat will facilitate the prompt introduction of aeronautical satellite services to 450,000,000 domestic passengers annually and the concomitant benefits to aviation safety and regularity of flight. Arinc and ATA state that the domestic air transport industry and the traveling public have a keen interest in the prompt initiation of an aeronautical satellite communications service that makes significant advances in safety, regularity of flight, and new capabilities. Arinc and ATA urge the Commission to act expeditiously and waive in part the international flight limitation on Inmarsat adopted in the *Inmarsat Report and Order* by authorizing aircraft in domestic flight to communicate via the Inmarsat system. Part (a) of the waiver request covers the period prior to the time when the domestic MSS system is capable of operating in accordance with the procedures and regulatory framework established in Gen. Docket No. 84-1234 and CC Docket No. 87-75.

6. Citing the Commission's prior action granting it an MSS license, AMSC argues that it alone should be the sole point of customer contact for interim service. AMSC claims that Commission policies have established it as the single mobile satellite licensee in the United States and, with the exception of AMSC's use of Inmarsat space segment for "early" service, have limited the use of Inmarsat in the United States to certain international flights. AMSC also alleges that if it is bypassed as the sole interim licensee, it will not be able to meet its role as guarantor of aviation safety communications priority.

7. On November 13, 1989, Comsat filed the above-captioned application to provide domestic aeronautical satellite capacity via Inmarsat space segment to implement the services requested by Arinc and ATA. The Comsat application was put on public notice April 11, 1990. AMSC filed an Opposition, and Comsat replied. Arinc and ATA also responded to AMSC's Opposition. AMSC responded to the pleadings of Comsat and Arinc/ATA.[14]

III. DISCUSSION

8. In considering the waiver request for interim service we must consider two issues: (1) whether the Commission's goal of early introduction of aeronautical mobile satellite services within the United States will be advanced by allowing interim service via Inmarsat; and (2) how to provide interim aeronautical mobile satellite service via Inmarsat.

A. Interim Aeronautical Mobile Satellite Services Within the United States Via Inmarsat Space Segment

9. In the *Domestic Licensing Order*, the Commission recognized that a domestic MSS system could not be operational until 1994 at the very earliest.[15] The Commission also found that the provision of domestic MSS will serve the public interest, convenience and necessity. Furthermore, the Commission in the *Inmarsat Report and Order* determined that early introduction of Inmarsat aeronautical services to the U.S. would best promote and protect U.S. interests in the development of aeronautical satellite services.[16] The Commission also indicated its willingness to consider requests for interim domestic service[17] and explicitly left open the possibility that Inmarsat would provide interim domestic MSS.[18]

10. In support of their request, Arinc and ATA assert that the international geographical restriction in the *Inmarsat Report and Order* was intended to apply in an environment in which the domestic mobile satellite system would in actuality be capable of providing aeronautical mobile satellite service (both safety and nonsafety) to aircraft in domestic flight, while the Inmarsat system (both space segment and ground segment) would be used to provide aeronautical satellite services to aircraft in international flight. Several of the parties agree with Arinc and ATA that an interim service waiver would serve the public interest by allowing for the speedy introduction of aeronautical services, given that any dedicated domestic space segment will probably not be operational until 1994 or later.[19] The FAA affirms its earlier comments in CC Docket No. 87-75, stating that interim access to Inmarsat space segment is required both to support the implementation of FAA plans for essential air traffic services improvements and to support preoperational trials and demonstrations. U.S.-based access to Inmarsat space segment is also necessary to provide the FAA with the regulatory means to influence uses of the spectrum available for aviation safety applications as they evolve.[20]

11. We have reviewed the record and find that there is a public interest basis for domestic use of Inmarsat space segment as described by Arinc and ATA in their request for an interim waiver.[21] We agree with Arinc and ATA that providers of interim Inmarsat services can make available in the near future a wide variety of beneficial aeronautical satellite services to aircraft in domestic flight. These include, for example, search and rescue services, air-to-ground links for the transmission of airlines' operational communications, in-flight performance monitoring data, meteorological information, air traffic control services, and public telephone and data services, which would not be available domestically via satellite prior to inauguration of service on a dedicated domestic system.[22] We are persuaded that allowing applicants to provide interim domestic aeronautical mobile satellite service via the Inmarsat system is the only way to make prompt service available to the U.S. domestic market since the Inmarsat space segment is the only L-band satellite system available prior to 1994. In addition, we agree with NTIA's position that allowing Comsat, the U.S. Signatory to Inmarsat, to provide interim domestic AMSS directly to customers using Inmarsat space segment would be consistent with Administration policy of free and fair trade.[23]

12. The interim service authorized herein is a domestic service, not an international service, and as such is an exception to the traditional role Inmarsat has played with-

in the U.S. telecommunications policy -that of providing satellite capacity for communications that are international in character. We recognize that the Inmarsat convention does not limit use of the Inmarsat system to only communications that are international in character, but members of Inmarsat are free to establish national policies defining how the Inmarsat system may be used within their respective jurisdictions. In the United States, we have generally authorized the use of Inmarsat for communications that are international in character except in instances where use of Inmarsat facilities for domestic communications fulfilled specific needs. For example, we have authorized on a temporary limited basis the use of transportable "land-based ship earth stations" to access Inmarsat space segment to meet certain satellite communications needs during the aftermath of natural or human disasters such as earthquakes, volcano eruptions and forest fires, and where these stations are the only adequate means of meeting urgent communications requirements.[24] We wish to emphasize that our decision herein (and in a companion order involving land mobile service) is also based on the unique need for the development of mobile satellite service within the United States and the specific circumstances surrounding it. While future additional domestic uses of Inmarsat might be found to be in the public interest, Inmarsat should not generally be viewed as an available option for other interim domestic services within the U.S. while the permanent structure for those services is being developed.[25]

13. AMSC opposes use of Inmarsat facilities on grounds of spectrum efficiency. We do not believe that allowing Inmarsat entry into the U.S. domestic market during the interim period would have a negative effect on spectrum efficiency. AMSC's technical comparison of the efficiency of its proposed domestic system to the Inmarsat system is irrelevant here because we are not choosing one system over the other. Although AMSC claims that it would lose six channels for every channel used by Inmarsat, the argument, even if true, is not applicable here because only the Inmarsat system will be operational during the interim period. Any potential spectrum interference effect that would be caused by the use of the Inmarsat system concurrently with the domestic MSS system is beyond the limited scope of this Order. We are authorizing use of the Inmarsat space segment only until the U.S. permanent MSS system is operational. Pending Commission action on part (b) of the Arinc/ATA waiver request, all domestic AMSS services that customers desire to continue will be required to be transferred to the authorized U.S. domestic AMSS and MSS service provider operating the dedicated satellite system as soon as that system is operational.[26]

14. Arinc, Comsat and all other operators of interim domestic AMSS shall stand ready to move their traffic over to the domestic system as soon as it is operational. All authority granted pursuant to this Order is strictly interim and conveys no right to continued use of the Inmarsat space segment for domestic AMSS after the domestic licensee begins to offer service. We reiterate our support for the development of a domestic MSS system to serve the needs of U.S. customers. Furthermore, we intend to assure that the transition from interim services to the domestic system will occur quickly, smoothly and efficiently. We recognize that transferral of domestic AMSS traffic to the domestic system will require careful planning and coordination. To that end, we require Arinc, Comsat and other interim domestic AMSS providers to file with this Commission a transition plan within 90 days after launch of a domestic MSS spacecraft. The transition plan shall detail the steps that will be taken to move domestic AMSS traffic to the new satellite without disruption to customers. Interim providers must serve a copy of their plans on the domestic licensee at the same time.

15. AMSC asserts that granting a temporary waiver of the Commission's restriction on the provision of domestic AMSS by Inmarsat would carve out huge exceptions to and effectively constitute a reversal of the Commission's fundamental policies for mobile satellite service and unnecessarily divert Commission resources.[27] We disagree. We find that Arinc and ATA have presented concrete evidence in the public interest sufficient to justify a waiver for providing interim domestic AMSS service via Inmarsat space segment facilities. The waiver would be effective for a limited, temporary period, until the domestic MSS system is operational. Without this waiver the public would be deprived of direct service during this time period. For these reasons, we find the advantages of granting the waiver outweigh any detriments cited by AMSC.

16. In addition to arguing deficiencies in the Arinc and ATA pleadings, AMSC claims that Arinc and ATA lack standing to file their interim service request because Arinc and ATA have not first approached AMSC for such service. AMSC also reasons that the interim service waiver is not needed because AMSC, as a common carrier, would have an obligation to provide service to Arinc and, therefore, Arinc is not aggrieved.[28] These arguments are based on AMSC's belief that it has an exclusive right to provide interim domestic AMSS and MSS service. As discussed below, we find unpersuasive AMSC's contention that it should have control over interim domestic AMSS.

B. Provision of Interim Aeronautical Mobile Satellite Services via Inmarsat Space Segment

17. The second issue concerns how interim aeronautical services via Inmarsat space segment facilities should be provided: whether by a single entity or by multiple entities. In the *Domestic Licensing Order*,[29] the Commission noted that it was deferring resolution of who should provide interim MSS service until a later time, saying "we are willing to explore a licensee's options for interim service when applications are filed seeking such authority and are subject to public notice and comment." Several arguments are raised for and against a single provider. AMSC maintains that it should be the single provider of interim (and permanent) domestic AMSS.

18. Both Arinc and ATA conclude this approach would thwart the steady developmental track of establishing a U.S.-owned domestic MSS system. Several other parties add that AMSC's proposal is unreasonable, inefficient, anticompetitive, and will lead to artificially inflated prices.[30] In NTIA's view, reseller middlemen are unnecessary given the sophistication and expertise of the commercial airlines and their communications collective, Arinc.[31] BT is also opposed to extending an exclusive license to the tentative domestic licensee during the interim period because the rationale for granting an exclusive permanent license is not applicable in the interim period.[32] Several parties thus state that the tentative domestic licensee has no greater claim than anyone else for the right to use the mobile satellite spectrum for interim service.[33] Geostar explains that the tentative domestic li-

censee's authorization is not intended to prevent other operators from using Inmarsat space segment in the MSS-AMSS(R) bands for interim service.[34] One of the arguments that Arinc and ATA raise against allowing AMSC to be the single provider is that AMSC would merely act as middleman by reselling Inmarsat capacity obtained from Comsat.

19. Several of the parties indicate that provision of service through multiple entities will also have the positive effect of encouraging the establishment of intra-Inmarsat competition of the variety contemplated in the *Inmarsat Report and Order* and will create an environment in which U.S. leadership in avionic development, equipment manufacturing, and service innovation can be maintained.[35] BT argues that extending an exclusive right to provide interim service would impose unnecessary costs on the airline industry and consumers at the same time that it would undercut the domestic provider's incentive to construct its own satellite system. It states that competition would boost the domestic provider's ability to finance its system by demonstrating a viable market and creating a ready customer base for its own satellite facilities when they become available.[36] Furthermore, BT believes that maintaining a restriction on the scope of Inmarsat services encourages other nations to develop similar restrictions, thereby multiplying safety and consumer problems that may be inherent in such protectionist schemes.[37]

20. AMSC disagrees and contends that it is more than a passive reseller and will perform other functions in addition to reselling, such as building facilities, in order to provide early aeronautical and land mobile satellite services.[38] AMSC also disagrees with the proposition that denial of the interim waiver request will provoke other nations to erect nationalistic barriers.[39] AMSC calls this position alarmist and unsubstantiated. AMSC further argues that the U.S. would not be able to exercise control or ownership over the space segment if what it calls a "foreign entity," Inmarsat, rather than AMSC, were to manage the space segment.[40]

21. When we conditionally authorized a domestic licensee to construct a satellite system for the provision of first generation land, aeronautical, and maritime mobile satellite services in the upper L-band in the United States, we did not state that the licensee was the " *only* " entity that could provide interim aeronautical mobile satellite service to aircraft in the United States.[41] We conclude that competition in the provision of interim domestic AMSS through a variety of service providers with their own ground segments, if they prefer, and using the Inmarsat space segment will promote efficiency and reasonable rates and lead to the rapid expansion of the aeronautical mobile satellite service.[42] Furthermore, allowing competitive entry of interim service providers in the domestic market should speed the introduction of new service offerings.[43]

22. We find that it will not be in the public interest, notwithstanding AMSC's arguments to the contrary, to make the tentative domestic licensee in the upper L-band the exclusive point of customer contact for interim aeronautical mobile satellite service using the Inmarsat space segment. We will apply the same access policy as for international AMSS, *i.e.*, access to Inmarsat aeronautical space segment by other U.S. service providers will be through Comsat.[44] Comsat will acquire space segment capacity from Inmarsat and provide this capacity both to aeronautical customers via optional Comsat aeronautical earth stations and to U.S. service providers which may operate their own aeronautical earth stations and resell Inmarsat space segment capacity to aeronautical customers. Other service providers can thus make full service offerings to their customers in competition with Comsat. Comsat must provide both users and other U.S. service providers access to Inmarsat aeronautical space segment. We expect Comsat to make tariff filings for domestic service offerings that reflect the tariff offerings for international aeronautical services. These tariffs should provide several access arrangements at varied prices, terms and conditions.[45] Thus, as a result of our action here, we expect that some parties may provide only domestic aeronautical mobile satellite service and others may provide both domestic and international services, during the interim period.

23. Finally, with respect to transmissions in the upper L-band, there is no reason to believe that a policy permitting multiple providers of interim AMSS will lead to a diminution of aviation safety or a lack of compliance with FAA standards. We disagree with AMSC that neither Comsat nor Inmarsat will show the degree of commitment to aviation safety communications that can be expected of AMSC if it is awarded the MSS license.[46] We are satisfied that the FAA supports the use of Inmarsat space segment on an interim basis.[47] Furthermore, we are satisfied that all interim service operations will be immediately able to satisfy our domestic requirement that AMSS transmissions in this band give priority and preemptive access to any AMSS(R) communications, particularly in accordance with Article 51 of the International Telecommunication Union (ITU) regulations.[48] For the longer term, the FAA points out that international standards for safety communications will be established by the International Civil Aviation Organization (ICAO), and that safety communications standards for aircraft equipment, space segment and other system elements will be established by the Radio Technical Commission for Aeronautics (RTCA) Special Committee 165. The FAA is confident that worldwide compatible standards for safety and nonsafety communications will be established.[49] We expect that all interim AMSS operations will conform with any new standards adopted prior to the regular domestic system becoming operational.

IV. CONCLUSION

24. In this *Memorandum, Opinion and Order* we conclude that the public interest requires early introduction of aeronautical satellite services in the U.S. prior to the operation of the dedicated domestic MSS system. We recognize that a policy of open entry via Inmarsat facilities during this interim period will provide U.S. service providers with market opportunities equal to foreign service providers. Thus, we believe that no single entity should be made the exclusive point of customer contact in the provision of interim domestic aeronautical mobile satellite service via the Inmarsat space segment. Accordingly, rather than address waivers of the *Inmarsat Report and Order* on a case-by-case basis, we are adopting a general waiver of the domestic restriction for the interim time period. We will process applications from new entrants for interim domestic service consistent with this order. Applicants should comply with all other provisions of Title III for those wishing to construct and operate aeronautical

earth stations[50] and with the appropriate requirements of Title II for those wishing to provide common carrier service.

25. We also permit those parties already authorized to provide Inmarsat aeronautical mobile satellite services to aircraft in international flight to provide interim Inmarsat aeronautical satellite services to aircraft in domestic flight. We thus temporarily waive the conditions imposed on IDB Aero-Nautical Communications, Inc. (IDB-A) and CICI, Inc. (CICI) in the *Memorandum, Opinion and Order*, 6 FCC Rcd 2485 (1991), and on Comsat in the *Memorandum Opinion, Order and Authorization*, 4 FCC Rcd 7176 (1989), that limit these companies' provision of aeronautical mobile satellite services to aircraft in international flight as defined by the Commission in CC Docket No. 87-75. Consistent with this Order, Comsat, IDB-A and CICI may provide Inmarsat aeronautical services on an interim basis to aircraft in flight between two domestic points without a necessity to modify their existing Title II or Title III authority (unless technical modifications are required to add these services). Appropriate tariff amendments should be filed. This will allow domestic aeronautical mobile satellite service to be provided immediately.

26. Prior to regular use, aircraft earth stations (AES) aboard U.S. aircraft must be authorized under Part 87 of our rules. At the present time, there are no provisions for the authorization of AES. The licensing procedures and technical standards for AES are being considered in PR Docket No. 90-315.[51] Therefore, any use of AES aboard U.S. aircraft prior to the conclusion of that docket will require a waiver of Sections 87.145 concerning the use of type accepted equipment, and 87.187 concerning available frequencies. Requests for waiver must provide the information required in existing licensing procedures in Part 87, and be submitted to the Private Radio Bureau. After adoption of the Report and Order in PR Docket No. 90-315, all equipment authorized under a waiver will be required to meet the technical standards and operational conditions established.

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that part (a) of the Arinc and ATA Request for Waiver is GRANTED and, therefore, the prohibition on direct domestic aeronautical mobile satellite service via the Inmarsat space segment is waived for the interim period.

28. IT IS FURTHER ORDERED that AMSC's Motion for Leave to File Further Reply is GRANTED.

29. IT IS FURTHER ORDERED that Comsat's Application for Authority to Provide Limited Aeronautical Services Within the U.S. via the Inmarsat System, File No. I-T-C-90-085, is GRANTED in part, as necessary to implement this Order.

30. IT IS FURTHER ORDERED that part (b) of the Arinc and ATA Request for Waiver and the corresponding part of Comsat's Application ARE DEFERRED.

31. IT IS FURTHER ORDERED that part (c) of the Arinc and ATA Request for Waiver and the corresponding part of Comsat's Application ARE DISMISSED.

32. IT IS FURTHER ORDERED that the conditions imposed on IDB Aero-Nautical Communications, Inc. (IDB-A) and CICI, Inc. (CICI) in the *Memorandum, Opinion and Order*, 6 FCC Rcd 2485 (1991), and on Comsat in the *Memorandum Opinion, Order and Authorization*, 4 FCC Rcd 7176 (1989), that limit these companies' provision of aeronautical mobile satellite services to aircraft in international flight as defined by the Commission in CC Docket No. 87-75 ARE WAIVED for the interim period as defined in this Order.

33. IT IS FURTHER ORDERED that Comsat shall file amendments to its current tariffs and IDB-A shall file tariff provisions with the Commission consistent with this decision before they commence service under the authority granted herein.

34. IT IS FURTHER ORDERED that Comsat shall continue to account for and file its earth station and space segment service investment and operational costs in a manner consistent with the accounting system and cost allocation procedures in CC Docket No. 87-75.

35. IT IS FURTHER ORDERED that Arinc, Comsat and all other interim domestic AMSS providers shall file with this Commission and serve on the domestic licensee a transition plan within 90 days after launch of a domestic MSS spacecraft. The transition plan shall detail the steps that will be taken to move all domestic AMSS traffic to the new satellite without disruption to customers.

36. The Commission retains jurisdiction over this matter to ensure nondiscriminatory use of, and equitable access to, the Inmarsat satellite system.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Provision of Aeronautical Services via the Inmarsat System, *Report and Order*, 4 FCC Rcd 6072 (1989), *recon. pending* (hereinafter *Inmarsat Report and Order*). British Telecom filed on September 14, 1989, a Petition for Reconsideration citing alleged problems with the geographical restrictions contained in the *Inmarsat Report and Order*.

[2] A mobile satellite service is a radio communication service between mobile earth stations and one or more space stations, or between mobile earth stations by means of one or more space stations. *See* 47 C.F.R. Section 2.1.

[3] Provision of Aeronautical Services via the Inmarsat System, *Notice of Proposed Rule Making (NPRM)*, 2 FCC Rcd 1976 (1987).

[4] The U.S. Table of Frequency Allocations applies to aircraft communicating with non-U.S. aeronautical earth stations via Inmarsat space segment while occupying U.S. airspace in originating or terminating international flights and to all aircraft communicating with U.S. aeronautical earth stations via Inmarsat space segment.

[5] AMSS(R) is a mobile satellite service in which mobile earth stations are located on board aircraft and in which the spectrum is reserved for aeronautical communications related to the safety and regularity of flight. Survival craft and emergency position-indicating radio beacon stations may also participate in this service. Amendment of Parts 2, 22, and 25 of the Commission's

Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, *Memorandum, Opinion, Order and Authorization*, 4 FCC Rcd 6041, 6060 n.6 (1989) (hereinafter *Domestic Licensing Order)* ; *remanded Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *on remand Tentative Decision*, 6 FCC Rcd 4900 (1991); *Final Decision*, FCC 91-427 (released January 6, 1992). *See* 47 C.F.R. Section 2.1.

[6] Communications Satellite Corporation and American Mobile Satellite Corporation Requests for Interim Waiver of Section 2.106 of the Commission's Rules to Provide AMSS(R) and MSS Services in the Maritime Bands 1530-1544 MHz and 1625.5-1645.5 MHz, 5 FCC Rcd 4117 (1990).

[7] The International Table of Frequency Allocations, which designates uses of the spectrum for international purposes only, adds land mobile satellite service (LMSS) as a co-primary or secondary service on various portions of the lower L-band.

[8] The International Table of Frequency Allocations has no secondary allocation in the upper L-band for MSS. Internationally, the primary allocation in the upper L-band frequencies 1545-1555 and 1646.5-1656.5 MHz is AMSS(R) and in the upper L-band frequencies 1555-1559 and 1656.5-1660 MHz is LMSS.

[9] We note that the existing authority does not include use of Inmarsat third generation space segment, but only first and second generation space segment. In File No. CSS-91-001-LA, Comsat proposes that the third generation Inmarsat spacecraft will be capable of operating in the entire upper and lower L-band, plus an additional 5 MHz of bandwidth covering the frequency range 1525-1530 MHz in the forward direction to match the corresponding 1626.5-1631.5 MHz subband already allocated in the return direction. Use of the additional 5 MHz, according to Comsat, will be contingent upon approval of such use at the 1992 World Administrative Radio Conference, as well as upon international frequency coordination.

[10] *Inmarsat Report and Order*, 4 FCC Rcd at 6078-79.

[11] *See, Domestic Licensing Order*, n. 4, *supra*.

[12] *Domestic Licensing Order*, 4 FCC Rcd at 6058.

[13] The waiver request was placed on public notice on November 22, 1989. American Mobile Satellite Corporation (AMSC) filed its opposition to the Arinc/ATA waiver request. British Telecommunications, plc (BT), Comsat, the Federal Aviation Administration (FAA) and National Telecommunications and Information Administration (NTIA) filed comments. AMSC, Arinc and ATA, BT and IDB Communications Group, Inc. (IDB), Geostar Messaging Corporation (Geostar) and Qualcomm, Inc. (Qualcomm) filed reply comments. AMSC filed both a motion for leave to file a further reply and a further reply to the waiver request. Arinc and ATA filed an opposition to AMSC's motion for leave to file further reply. AMSC filed a reply to the opposition to motion for leave to file further reply. The U.S. State Department filed a letter after expiration of the Reply Comment filing period. All these filings have been considered.

[14] GE American Communications, Inc., also filed a Petition to Deny the Comsat application, but withdrew its petition, requesting that any grant of Comsat's application be effective only until a dedicated U.S. domestic aeronautical satellite system becomes available.

[15] *Domestic Licensing Order*, 4 FCC Rcd at 6058-60.

[16] *Inmarsat Report and Order*, 4 FCC Rcd at 6078.

[17] *Domestic Licensing Order*, 4 FCC Rcd at 6058.

[18] *Inmarsat Report and Order*, 4 FCC Rcd at 6078, n. 23.

[19] BT Comments at 4-5; Comsat Comments at 2-3; FAA Comments at 1-2; IDB Reply Comments at 3; NTIA Comments at 3-5; State Department Letter at 1.

[20] FAA Comments at 1-2.

[21] Any provision of the Commission's rules may be waived by the Commission on petition if good cause is shown. 47 C.F.R. Section 1.3. The applicant for waiver must "plead with particularity the facts and circumstances which warrant such action." *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F. 2d 664, 666 (D.C. Cir. 1968). A waiver is appropriate in unique circumstances which can be distinguished from the general situations to which the rule applies. *Station WTHR - TV*, 47 Rad. Reg. 2d 1130, 1132 (1980).

[22] Arinc/ATA Waiver Request at 6. *See Inmarsat Report and Order*, 4 FCC Rcd at 6078. Part 87 of the Commission's Rules provides for the provision of these services via terrestrial systems.

[23] NTIA Comments at 5.

[24] *Inmarsat Report and Order*, 4 FCC Rcd at n. 26.

[25] To the extent questions may exist regarding our legal authority under the International Maritime Satellite Act to authorize domestic satellite service within the United States, we believe we have authority under section 4(i) of the Communications Act to authorize such service on an interim basis under the unique circumstances at issue here.

[26] Also pending before the Commission is a British Telecom Petition for Reconsideration of the geographical restrictions contained in the *Inmarsat Report and Order*.

[27] AMSC Opposition at 20. A grant of a waiver must not undermine the policy served by the rule and must not unnecessarily divert Commission resources. *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[28] AMSC Reply at 3, 4.

[29] *Domestic Licensing Order*, 4 FCC Rcd at 6058.

[30] NTIA Comments at 5; Geostar Reply Comments at 15-16.

[31] NTIA indicates the commercial airlines have a sufficient level of knowledge to take satellite capacity directly from the space segment provider, without the service assistance or financial mark-up of a series of reseller middlemen. NTIA Comments at 5-6. Furthermore, it is NTIA's understanding that AMSC has not explicitly stated that it should be the " *exclusive* provider" of interim domestic MSS. NTIA states that Gen. Docket No. 84-1234 and CC Docket No. 87-75, as well as the procompetitive policies of the Commission, place a great burden on AMSC to justify the need and wisdom of granting AMSC the authority to be even the " *exclusive* reseller" of access to Inmarsat space segment facilities for domestic services. NTIA Comments at 4-5.

[32] BT alleges that permanent grant is intended to protect AMSC's proposed capital investment in satellite facilities, and this logic does not apply to its operations as a mere lessee of facilities funded by its competitors. BT Comments at 4.

[33] Arinc/ATA Reply Comments at 30-31; Geostar Reply Comments at 4.

[34] Geostar Reply Comments at 4.

[35] Arinc/ATA Waiver Request at 6-8; BT Comments at 2-3, 9-10; FAA Comments at 1; IDB Reply Comments at 3.

[36] BT Comments at 4-5.

[37] BT adds that the Commission's restriction complicates the Commission's own efforts and those of other countries, such as the United Kingdom, to encourage other nations to open their markets and liberalize their telecommunications regimes. BT Comments at 9; Arinc/ATA Waiver Request, Exhibit A.

[38] AMSC Reply Comments at 4, 6. This Order does not address interim land mobile satellite service; we only consider the issue of interim aeronautical mobile satellite service.

[39] AMSC Opposition at 24-25.

[40] AMSC Opposition at 6-7.

[41] Arinc/ATA Reply Comments at 18.

[42] *See* IDB Reply Comments at 3-4.

[43] Arinc/ATA Waiver Request at 7-8; NTIA Comments at 4-5.

[44] Use of Inmarsat space segment by aircraft flying within U.S. airspace and communicating with non-U.S. aeronautical earth stations will be pursuant to the terms and provisions of the Inmarsat Convention and Operating Agreement.

[45] *Inmarsat Report and Order*, 4 FCC Rcd at 6082-83.

[46] AMSC Opposition at 27.

[47] FAA Comments at 3, 5.

[48] We also expect the individual aircraft and the Inmarsat network control office centers will be able to control communications to and from aircraft so that non-safety communications can be terminated, if necessary, to support safety services, particularly in the AMSS(R) bands used by the Inmarsat second generation space segment.

[49] FAA Comments at 2-4.

[50] Applications for new or modified earth stations to provide interim domestic AMSS should be filed with the Domestic Facilities Division using the new FCC Form 493 and the Fixed Satellite Transmit/Receive Earth Station procedures. Send applications along with the appropriate fees and FCC Form 155 to the Mellon Bank, P.O. Box 358160, Pittsburgh, PA.

[51] Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations, PR Docket No. 90-315, 5 FCC Rcd 3933 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-101

In the Matter of

Amendment of Section 73.202(b),	RM-7062
Table of Allotments,	RM-7449
FM Broadcast Stations.	RM-7450
(Stephenville, Benbrook,	RM-7451
Decatur, Jacksboro, and	
Wichita Falls, Texas;	
and Healdton, and Lone Grove,	
Oklahoma)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 27, 1992; Released: February 7, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 5 FCC Rcd 1575 (1990) (*"Notice"*), issued in response to the request of Cen-Tex Media, Inc. ("petitioner"). The *Notice* proposed the substitution of Channel 289C for Channel 289C1 at Stephenville, Texas, the reallotment of Channel 289C from Stephenville to Benbrook, Texas, and the modification of the license of Station KSTV-FM to specify operation on Channel 289C at Benbrook. In order to accomplish the upgrade, the *Notice* also proposed the substitution of Channel 269A for vacant Channel 229A at Jacksboro, Texas,[2] and the substitution of Channel 273A for Channel 288A at Wichita Falls, Texas.[3] An *Order to Show Cause* was issued to Lake Country Communications, Inc. ("Lake Country"), licensee of Station KICM(FM), Channel 289C2, Healdton, Oklahoma, directing the licensee to demonstrate why its license should not be modified to specify operation on Channel 229C2 in lieu of Channel 289C2.

BACKGROUND

2. The following comments and counterproposals were filed before the comment deadline date of May 3, 1990. Petitioner filed supporting comments in response to the *Notice*. Petitioner's comments also included a counterproposal requesting reallotment of Channel 289C to Decatur, Texas, rather than Benbrook, in the event its proposed change of community to Benbrook is not adopted, and also stated its intention to reimburse Lake Country for its related expenses in changing its frequency to Channel 229C2. William L. Cook ("Cook") filed a counterproposal requesting allotment of Channel 229C1 to Lone Grove, Oklahoma.[4] Lake Country filed a counterproposal requesting allotment of Channel 229C1 instead of the proposed substitution of Channel 229C2, and also requesting reimbursement for its expenses related to this upgrade. Thereafter, petitioner, Lake Country, and Joseph Bahr filed reply comments.[5]

3. On May 23, 1990, Lake Country withdrew its counterproposal to upgrade on Channel 229C1 at Healdton. Despite this withdrawal, Lake Country's counterproposal was included, along with petitioner's and Cook's counterproposals, in the Commission's *Public Notice* Report No. 1823 issued July 18, 1990. After this *Public Notice* of the counterproposals was issued, petitioner, Lake Country, SSS Communications, Inc., licensee of Station KYNZ(FM), Lone Grove, Oklahoma, and Cook filed reply comments.

THE PLEADINGS

4. In its comments in support of its petition for rule making, petitioner stated that the Commission's minimum distance separation and city-grade coverage requirements dictate that Station KSTV-FM change its community of license in order to achieve the proposed upgrade. Therefore, petitioner proposed the reallotment of Channel 289C to Benbrook, Texas, population 13,579 persons,[6] or, in the alternative, a counterproposal at Decatur, Texas, population 4,104, in the event the Commission does not adopt the Benbrook proposal. In support, petitioner stated that its proposal or counterproposal would provide first local service and city grade coverage to either Benbrook or Decatur, noting that Stephenville will retain local service from Stations KSTV(AM) and KVQC(FM), while continuing to receive reception service from reallotted Station KSTV(FM). Furthermore, petitioner stated that its original proposal and its counterproposal will utilize the same transmitter site and channel substitutions. With respect to the required channel substitutions, petitioner pointed out that the proposed channel substitution for Station KICM(FM) on Channel 229C2 in

[1] The communities of Decatur, Texas, and Lone Grove, Oklahoma, have been added to the caption.

[2] After the *Notice* was issued, an application (BPH-900524MA) for Channel 229A was filed by Albert L. Crain.

[3] At the time the *Notice* was issued, five applications were pending for Channel 288A at Wichita Falls, Texas. Since that time, a construction permit was granted to one of the applicants, Sawmill Broadcasting ("Sawmill"). All of the applicants, including Sawmill, were served with the *Notice* by certified mail, and Commission records show that Sawmill received service on March 16, 1990.

[4] Coordinates for the proposed allotment are North Latitude 34-05-25 and West Longitude 97-16-00 at a site 8.5 kilometers (5.3 miles) south of the community.

[5] Bahr's reply comments, which attempt to state an interest in applying for Channel 289C at Benbrook, Texas, will not be considered, because the *Notice* clearly stated that, pursuant to Section 1.420, no competing expressions of interest would be entertained for Channel 289C at Benbrook.

[6] All references to population are based on 1980 U.S. Census figures.

Healdton can be made at Station KICM(FM)'s existing transmitter site, and reiterated its willingness to reimburse Station KICM's licensee, Lake Country, for its reasonable expenses in making the channel substitution. Additionally, petitioner stated that the proposed substitution of Channel 273A for Channel 288A at Wichita Falls, Texas, can be made in compliance with the Commission's spacing requirements with respect to the reference coordinates and for the construction permit for that allotment. Finally, petitioner reaffirmed its intention to apply for the upgraded facility at either community, if allotted, and construct it if issued a permit.

5. In support of his counterproposal, Cook stated that the allotment of Channel 229C1 at Lone Grove, Texas, as the community's first local FM channel, should be made in lieu of the changes proposed in the *Notice of Proposed Rule Making* in this proceeding. Specifically, Cook argued that his counterproposal should be favored over the petitioner's because the allotment of Channel 289C at Benbrook, Texas, would establish another service in the Dallas-Fort Worth metropolitan area, whereas Cook's would result in the establishment of a new wide-coverage FM station at Lone Grove, population 3,369. Cook also argued that his proposal should be favored because his proposal would require only one channel substitution, Channel 269A for vacant but applied for Channel 229A at Jacksboro, Texas, without requiring any existing stations to change frequencies.

6. In response to the *Order to Show Cause*, Lake Country consented to the proposed substitution of Channel 229C2 for Channel 289C2 at Healdton, Oklahoma, and the modification of its license to specify operation on Channel 229C2. Lake Country also filed a counterproposal in which it requested the substitution of Channel 229C1 for Channel 289C2 at Healdton, Oklahoma, and modification of its license accordingly, without being subjected to competing expressions of interest, and that it receive reimbursement for the expenses associated with this upgrade. Thereafter, Lake Country withdrew this counterproposal, stating that it did not want to jeopardize its continued operation of Station KICM(FM).

7. In reply comments, both petitioner and Lake Country opposed Cook's counterproposal, arguing that Cook falsely asserted that his proposal would be providing first service to the community of Lone Grove. Petitioner expressed support for Lake Country's counterproposal, but opposed Lake Country's request for reimbursement for its upgrade. In addition to its request for reimbursement, Lake Country suggested that the Commission allot Channel 253A at Lone Grove.[7] In response to the Commission's *Public Notice*, petitioner reiterated its contention that its proposal at Decatur is superior to the other proposals pursuant to the Commission's allotment priorities because it will provide first local service to the community. Lake Country's reply comments merely reiterated its withdrawal. In his reply comments, Cook stated that his counterproposal, while admittedly not proposing first local service to Lone Grove, should be preferred because it would provide first wide coverage service to the community and would provide the only new service, as all of the other proposals are upgrades. As an alternative, Cook also included an expression of interest in the allotment of Channel 229C1 at Healdton. In its reply comments, SSS, Inc., licensee of Station KYNZ(FM), Lone Grove, Oklahoma, opposed Cook's counterproposal because it is based on an incorrect assertion that Channel 229C1 would be the first local FM Channel allotted to Lone Grove.

DISCUSSION

8. After careful consideration of the pleadings in this matter, we believe that the public interest would be served by granting petitioner's counterproposal and allotting Channel 289C at Decatur, Texas, modifying the license of Station KSTV-FM accordingly, and granting the related channel substitutions at Wichita Falls,[8] and Jacksboro, Texas, and Healdton, Oklahoma, and modifying the construction permit and license, respectively, for Stations KQXC(FM) and KICM(FM). We also will dismiss Lake Country's counterproposal and Cook's expression of interest in Lake Country's counterproposal,[9] and will deny Cook's counterproposal at Lone Grove on comparative grounds.

9. We find that a grant of petitioner's proposal is in the public interest for the following reasons. First, petitioner's proposal is preferred pursuant to the Commission's allotment priorities. These priorities are (1) first full time aural service; (2) second full time aural service; (3) first local service; (4) other public interest matters. Coequal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In this case, the first two priorities are not implicated. With respect to priority three, Decatur is the only community which clearly will receive first local service. Benbrook, petitioner's original proposal, is a community within the Dallas-Fort Worth Urbanized Area, as defined by the U.S. Census Bureau, which raises a question whether a first local service preference would be warranted. *See RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck, Inc. KBEC*, 3 FCC Rcd 5374 (1988). Commission records confirm that Lone Grove is currently served by Station KYNZ(FM), and

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[7] Since no expression of interest was filed for this allotment, it was not considered.

[8] As indicated in note 3, *supra*, Sawmill Broadcasting ("Sawmill") became the permittee of Channel 288A at Wichita Falls, Texas during the pendency of this proceeding. We note, however, Sawmill is not entitled to reimbursement because Sawmill was an applicant at the time of the *Notice*, and received actual notice of the channel substitution. We also note that although the Commission granted an application (BAPH-910912GQ) for assignment of construction permit from Sawmill to Red River Communications, Inc., on October 28, 1991, notice of consummation of that transaction has not yet been received.

[9] We note that because Lake Country withdrew its counterproposal for Channel 229C1 at Healdton before it was placed on public notice, the public notice of that counterproposal was made in error. As a result, we will dismiss Lake Country's counterproposal as requested and the competing expression of interest filed by Cook. In light of this resolution, we note that Lake Country will be reimbursed in full for its related reasonable expenses in making the channel substitution from Channel 289C2 to Channel 229C2. *See Circleville, Ohio*, 9 RR 2d 1579 (1967). We also note that Lake Country would not have been entitled to reimbursement for the expenses incurred in effectuating the upgrade proposed in its counterproposal. *See Oakdale, Louisiana*, 3 FCC Rcd 5815 (1988).

therefore Cook's proposal would provide second local transmission service to Lone Grove. Second, the change of community from Stephenville to Decatur is consistent with, the Commission's policies with respect to change of community of license pursuant to Section 307(b) of the Communications Act of 1934, as amended, because Stephenville retains two existing aural services. Stations KSTV(AM), and KCUB(FM), and Decatur is currently unserved. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, *recon. granted in relevant part*, 5 FCC Rcd 7094 (1990). Therefore, petitioner's counterproposal to reallot Channel 289C at Decatur will be preferred over Cook's proposal to allot Channel 229C1 at Lone Grove.

10. An engineering analysis reveals that Channel 289C can be allotted at Decatur without a site restriction,[10] and Channel 269A can be substituted for Channel 229A at Jacksboro without a site restriction.[11] Channel 229C2 can be substituted for Channel 289C2 at Healdton at Station KICM(FM)'s present transmitter site,[12] and Channel 273A can be substituted for Channel 288A at Wichita Falls at KQXC(FM)'s construction permit transmitter site.[13]

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Healdton, Oklahoma	229C2
Decatur, Texas	289C
Jacksboro, Texas	269A
Stephenville, Texas	252A
Wichita Falls, Texas	225C, 260C1, 273A, 277C, 292C2

12. IT IS FURTHER ORDERED, That, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cen-Tex Media, Inc. for Station KSTV(FM), Channel 289C1, Stephenville, Texas, IS MODIFIED to specify operation on Channel 289C, Decatur, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission an application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Lake Country Communications, Inc. licensee of Station KICM(FM), Channel 289C2, Healdton, Oklahoma, and the construction permit of Sawmill Broadcasting, permittee of Station KQXC(FM), Channel 288A, Wichita Falls, Texas, ARE MODIFIED to specify operation on Channel 229C2 and Channel 273A, respectively, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KICM(FM)'s or Station KQXC(FM)'s authorizations, except the channels as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with the stations' authorizations except for the channels as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, that the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

Robert A. DePont, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036
(Counsel for Sawmill Broadcasting, permittee of KQXC(FM), Wichita Falls, TX)

Red River Communications, Inc.
1209 Parkway
Austin, Texas 78703
(Assignee of KQXC(FM), Wichita Falls, TX)

Vincent J. Curtis, Jr., Esq.
Fletcher, Heald, & Hildreth
1225 Connecticut

Albert L. Crain
Route 6, Box 250
Byhalia, MS 38611
(Applicant for Channel 229A, Jacksboro, TX)

[10] The coordinates for Channel 289C at Decatur are 32-57-30 and 98-00-15.

[11] The coordinates for Channel 269A at Jacksboro are 33-13-06 and 98-09-48. As indicated in note 2 *supra*, an application (BPH-900524MA) was filed for Channel 229A at Jacksboro. Our engineering analysis confirms that the site specified in that application (33-13-36 and 98-10-51) will also work for Channel 269A. The applicant will be served with a copy of this *Report and Order* and be permitted to amend its application to Channel 269A without loss of cut-off protection. *See, e.g., Decatur, Indiana*, 6 FCC Rcd 1230, 1232 (1991).

[12] The coordinates for Station KICM's transmitter site at Healdton are 34-02-27 and 97-20-00.

[13] The coordinates for Station KQXC's transmitter site at Wichita Falls are 33-53-50 and 98-32-33.

Avenue, N.W., Suite 400
Washington, D.C. 20036
(Counsel for Lake Country
Communications, Inc.)

15. IT IS FURTHER ORDERED, that the counter-proposal filed by Lake Country Communications, Inc. (RM-7451) IS DISMISSED.

16. IT IS FURTHER ORDERED, that the counter-proposal filed by William L. Cook (RM-7449) IS DENIED.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-319

In the Matter of

Amendment of Section 73.202(b), RM-7844
Table of Allotments,
FM Broadcast Stations.
(Blakely, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 28, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Hirsch Broadcasting, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 6517 (1991), proposing the substitution of Channel 226C3 for Channel 226A at Blakely, Georgia, and the modification of its license to specify the higher powered channel. Petitioner filed comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 226C3 for Channel 226A at Blakely, Georgia, since it could provide the community with a wide coverage area FM station. Channel 226C3 can be allotted to Blakely at petitioner's specified site in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.6 kilometers (10.3 miles) southwest of the community. In accordance with Section 1.420(g) of the Commission's Rules, we are modifying the license of Station WDKZ(FM) to specify operation on Channel 226C3 in lieu of Channel 226A at Blakely, Georgia.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Blakely, Georgia	226C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WDKZ(FM), Blakely, Georgia, IS MODIFIED, to specify operation on Channel 226C3 in lieu of Channel 226A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Hirsch Broadcasting, Inc., licensee of Station WDKZ(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-321

In the Matter of

Amendment of Section 73.202(b), RM-7833
Table of Allotments,
FM Broadcast Stations.
(Port St. Joe, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 29, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 6521 (1991), issued in response to a petition filed by WMTO Limited Partnership, ("petitioner"), licensee of Station WMTO(FM), Channel 228C3, Port St. Joe, Florida, proposing the substitution of Channel 228C2 for Channel 228C3 at Port St. Joe and modification of its license to specify operation on Channel 228C2. Petitioner filed comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by proposing the substitution of Channel 228C2 for Channel 228C3 at Port St. Joe, since it could provide an additional wide coverage area FM service to the community. Channel 228C2 can be allotted to Port St. Joe in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioners specified site 7.7 kilometers (4.8 miles) southeast of the community.[1] in order to avoid a short-spacing to a construction permit for Station WRJM(FM), Channel 229C1, Geneva, Alabama. In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license for Station WMTO(FM) to specify operation on Channel 228C2.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Port St. Joe, Florida	228C2, 233C

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WMTO(FM), Port St. Joe, Florida, IS MODIFIED, to specify operation on Channel 228C2 in lieu of Channel 228C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, WMTO Limited Partnership, licensee of Station WMTO(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 228C2 at Port St. Joe are North Latitude 29-45-17 and West Longitude 85-15-26.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-16

In the Matter of

Amendment of Section 73.202(b). RM-7887
Table of Allotments,
FM Broadcast Stations.
(Hazelhurst, Jeffersonville,
Mt. Vernon, Sandersville,
Soperton and Tennille, Georgia)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: January 29, 1992; Released: February 7, 1992

Comment Date: March 30, 1992
Reply Comment Date: April 14, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Jeff Davis Broadcasters ("Jeff Davis"), licensee of Station WVOH(FM), Channel 228A, Hazelhurst, Georgia, ALP Limited Partnership ("ALP"), permittee of Station WWST(FM), Channel 229A, Jeffersonville, Georgia, and Wesley James Holden ("Holden") (jointly referred to as "petitioners"). Petitioners request the substitution of Channel 228C2 for Channel 228A at Hazelhurst, Georgia, and the modification of Station WVOH(FM)'s license accordingly; the substitution of Channel 229C2 for Channel 229A at Jeffersonville, Georgia, and the modification of the construction permit for Station WWST(FM) accordingly; and the allotment of Channel 269A to Mt. Vernon, Georgia, as that community's first local FM transmission service. The upgrades at Hazelhurst and Jeffersonville require the substitution of Channel 260A for Channel 228A at Sandersville, Georgia, and the modification of Station WSNT(FM)'s license to specify Channel 260A; the substitution of Channel 291A for Channel 269A at Soperton, Georgia, and the modification of Station WKTM(FM)'s license to specify Channel 291A; and the substitution of Channel 270A for vacant but applied for Channel 260A at Tennille, Georgia.[1] Jeff Davis, ALP and Holden state that they will apply for the Hazelhurst, Jeffersonville, and Mt. Vernon channels respectively, if allotted.

2. We believe the public interest would be served by consideration of this proposal. Mt. Vernon, a community of 1,737 persons,[2] would receive its first local FM transmission service. In addition, the communities of Hazelhurst and Jeffersonville would receive expanded area FM services. Channel 228C2 can be substituted for Channel 228A at Hazelhurst, Georgia at its current licensed transmitter site,[3] and the license for Station WVOH(FM) modified accordingly, in compliance with the Commission's spacing requirements, provided Channel 260A is substituted for Channel 228A at Sandersville, Georgia, and Channel 270A is substituted for Channel 260A at Tennille, Georgia. Channel 260A can be allotted to Sandersville at its current transmitter site for Station WSNT(FM),[4] and Channel 270A can be allotted to Tennille in compliance with the Commission's minimum spacing requirements with a site restriction 7.2 kilometers (4.5 miles) south.[5] Channel 229C2 can be substituted for Channel 229A at Jeffersonville in compliance with the Commission's spacing requirements with a site restriction of 17.4 kilometers (10.8 miles) northwest of the community.[6] Channel 269A can be allotted to Mt. Vernon, Georgia, in compliance with the Commission's spacing requirement, with a site restriction 4.4 kilometers (2.7 miles) east,[7] provided Channel 291A is substituted for Channel 269A at Soperton, Georgia, and the license for Station WKTM(FM) modified accordingly.[8]

3. As requested, we shall propose to modify the license of Station WVOH(FM), Hazelhurst, Georgia, to specify operation on Channel 228C2 in lieu of Channel 228A, and the construction permit of Station WWST(FM), Jeffersonville, Georgia, to specify operation on Channel 229C2 in lieu of Channel 229A, in accordance with Section 1.420(g) of the Rules, without entertaining other expressions of interest or requiring the parties to demonstrate the availability of an additional equivalent channel for use by any such interested parties. We will also propose the allotment of Channel 269A to Mt. Vernon, Georgia, as that community's first local FM service. The license for Station WSNT(FM), Sandersville, Georgia, can be modified to specify operation on Channel 260A in lieu of Channel 228A, the license for Station WKTM(FM), Soperton, Georgia, can be modified to specify operation on Channel 291A in lieu of Channel 269A, and Channel 270A can be substituted for Channel 260A at Tennille, Georgia. A Commission engineering analysis indicates that if the Tennille channel substitution was adopted, the sites specified in the pending applications for Tennille would be short-spaced to Station WTHO(FM), Channel 269A, Thomson, Georgia. The applicants would be permitted to amend their applications to specify nonconflicting sites without loss of cut-off protection

[1] The applicants at Tennille are Broadcast Media, Co. (File No. BPH-901227MA) and Lee M. Pierce, Sr. (File No. BPH-901227MB).
[2] Population figures are taken from the 1980 U.S. Census.
[3] The coordinates for Channel 228C2 at Hazelhurst are North Latitude 31-51-15 and West Longitude 82-34-00.
[4] The coordinates for Channel 260A at Sandersville are North Latitude 32-58-23 and West Longitude 82-48-34.
[5] The coordinates for Channel 270A at Tennille are North Latitude 32-56-24 and West Longitude 82-48-06.
[6] The coordinates for Channel 229C2 at Jeffersonville are North Latitude 32-47-00 and West Longitude 83-28-36.
[7] The coordinates for Channel 269A at Mt. Vernon are North Latitude 32-10-10 and West Longitude 82-33-09.
[8] The coordinates for Channel 291A at Soperton are North Latitude 32-23-19 and West Longitude 82-42-13.

since the channels are of an equivalent class. *See Andalusia, AL*, 49 FR 32201 (Aug. 13, 1984); *see also Salmanca, NY and Bradford, PA*, 50 FR 26208 (1985), and *Sanibel, FL*, 50 FR 32706 (1985). We will serve a copy of this *Notice* on the applicants.

4. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred therewith. Jeff Davis and ALP has stated that they will jointly reimburse the licensee of Station WSNT(FM), Sandersville, Georgia, for the legitimate expenses associated with the change in channels. In addition, the Commission usually does not require a station to change its transmitter site in order to accommodate a new allotment, without the consent of the affected station. SOL Broadcasting, Inc. ("SOL"), licensee of Station WKTM(FM), Soperton, Georgia, has entered into an agreement with ALP to change its existing transmitter site in order to accommodate ALP's upgrade at Jeffersonville. Since the licensee of Station WKTM, Soperton, Georgia has consented to the proposed channel substitution, we shall not issue an *Order to Show Cause* to that licensee. However, we are herein issuing an *Order to Show Cause* to the licensee of Station WSNT(FM), Channel 228A, Sandersville, Georgia, to show why its license should not be modified as proposed.

5. In view of the above the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

	Channel No.	
City	Present	Proposed
Hazelhurst, Georgia	228A	228C2
Jeffersonville, Georgia	229A	229C2
Mt. Vernon, Georgia	--	269A
Sandersville, Georgia	228A	260A
Soperton, Georgia	269A	291A
Tennille, Georgia	260A	270A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Radio Station WSNT, Inc., licensee of Station WSNT(FM), Sandersville, Georgia, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 260A in lieu of Channel 228A.

7. Pursuant to Section 1.87 of the Commission's Rules, Radio Station WSNT, Inc., may, not later than **March 30, 1992,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Radio Station WSNT, Inc., to furnish additional information. If Radio Station WSNT, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radio Station WSNT, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Sol Broadcasting, Inc.
Radio Station WKTM
Box 417
Soperton, Georgia 30457

Radio Station
WSNT, Inc.
Box 150
Sandersville, Georgia 31080

Lee M. Pierce, Sr.
P.O. Box 731
Sandersville,
Georgia 31082
(Applicant at
Tennille, Ga.)
(BPH-901227MB)

Broadcast Media Co.
P.O. Box 314
Sandersville,
Georgia 31055
(Applicant at
Tennille, Ga.)
(BPH-901227MA)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **March 30, 1992,** and reply comments on or before **April 14, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dennis F. Begley
Reddy, Begley
& Martin
2033 M Street, N.W.,
Suite 500
Washington, D.C. 20036
(Attorney for Jeff Davis
Broadcasters, Inc.)

Lawrence J. Bernard, Jr.
1300 19th Street, N.W.
Suite 240
Washington, D.C. 20036
(Attorney for ALP
Limited Partnership
and Wesley James Holden)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.

However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 30, 1992

NOTICE OF COMMENT FILING DATES ON NECA'S PROPOSED MODIFICATIONS TO THE AVERAGE SCHEDULE FORMULAS

On December 31, 1991, the National Exchange Carrier Association, Inc. ("NECA") filed modifications to the interstate average schedules that NECA proposes would become effective on July 1, 1992.

NECA states that its proposed modifications would, on average, increase exchange carrier settlements by 11.25%. Carriers with 500 or fewer access lines would receive the largest projected increase (30.1%), while carriers with 50,000 or more access lines would receive the smallest projected increase (3.9%).

Copies of NECA's proposed modifications to the average schedules, supporting documentation, and errata (dated January 15, 1992) may be obtained from the Commission's public records duplication contractor, The Downtown Copy Center, 1114 21st St., N.W., Washington, D.C. 20037. Telephone: (202) 452-1422. The record in this proceeding is also available for public inspection and duplication at Room 544, 1919 M Street, N.W., Washington, D.C.

Comments on NECA's proposed revisions to the average schedules may be filed on or before February 14, 1992. Reply comments may be filed on or before February 24, 1991. Commenting parties should file five (5) copies of their comments and reply comments with the Secretary, Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554; one (1) copy of their comments and reply comments with The Downtown Copy Center; and two (2) copies of their comments and reply comments at Room 544, 1919 M Street, N.W., Washington, D.C. 20554.

For consideration in this proceeding, all filings should be captioned "In the Matter of National Exchange Carrier Association December 31, 1991 Proposed Revisions to the Average Schedule Formulas."

For further information, contact Kent R. Nilsson at (202) 632-6363.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

CC Docket No. 91-331

In the Matter of

Peoples Telephone Company, Inc.

ORDER
(Proceeding Terminated)

Adopted: January 28, 1992; Released: January 30, 1992

By the Chief, Common Carrier Bureau:

1. On November 8, 1991, we released orders directing certain operator service providers (OSPs) to demonstrate that their rates are just and reasonable and to begin announcing, at the beginning of each call, that their rates are available upon request. [1] The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) authorizes the Commission to impose either or both of these requirements on any OSP whose rates and charges filed pursuant to that Act appear, upon review, to be unjust or unreasonable. *See* 47 U.S.C. § 226(h)(2).

2. On January 10, 1992, Peoples Telephone Company, Inc. (PTC) filed revisions to its informational tariff which reduce its rates substantially. In an accompanying report of sample prices, PTC states that its total charge for a sample eight-minute call would be $6.58 under its revised rates. In a report filed June 21, 1991, PTC stated that its total charge for the same call under the rates then in effect would be $7.85. This represents a reduction of more than 16 percent from the highest total charge PTC reported in its June 21 report. It was on the basis of that report and the rates PTC then had in effect that we found that PTC's rates appeared to be unjust and unreasonable. PTC no longer charges the rates that prompted this proceeding. PTC therefore need not provide further justification for its rates and charges at this time and is not required to announce, at the beginning of each call that it handles, that its rates are available on request.[2] We hereby terminate the captioned proceeding.

3. Accordingly, IT IS ORDERED that the proceeding initiated in CC Docket No. 91-331 IS TERMINATED.

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[1] Advanced Technology Cellular Telecommunications, CC Docket No. 91-324, DA 91-1379, released Nov. 8, 1991 (Com.Car.Bur.); Cherokee Communications, Inc., CC Docket No. 91-325, DA 91-1380, released Nov. 8, 1991 (Com.Car.Bur.); Capital Network Systems, Inc., CC Docket No. 91-326, DA 91-1381, released Nov. 8, 1991 (Com.Car.Bur.); Com Systems, Inc. CC Docket No. 91-329, DA 91-1384, released Nov. 8, 1991 (Com.Car.Bur.); Conquest Telecommunications Services, CC Docket No. 91-327, DA 91-1382, released Nov. 8,. 1991 (Com.Car.Bur.); CPS Operator Services, Inc., CC Docket No. 91-328, DA 91-1383, released Nov. 8, 1991 (Com.Car.Bur.); International Pacific, Inc., CC Docket No. 91-330, DA 91-1385, released Nov. 8, 1991 (Com.Car.Bur.); Peoples Telephone Company, Inc., CC Docket No. 91-331, DA 91-1386, released Nov. 8, 1991 (Com.Car.Bur.); South Texas Phone, Inc., CC Docket No. 91-332, DA 91-1387, released Nov. 8, 1991 (Com.Car.Bur.); TelTrust, Inc., CC Docket No. 91-333, DA 91-1388, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Fiberline Communications, CC Docket No. 91-334, DA 91-1389, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Long Distance, Inc., CC Docket No. 91-331, DA 91-1390, released Nov. 8, 1991 (Com.Car.Bur.).

[2] We emphasize that this Order does not represent an affirmative finding that PTC's rates are just and reasonable.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 30, 1992

PLEADING CYCLE ESTABLISHED FOR PACIFIC TELESIS GROUP'S PETITION FOR WAIVER OF THE COMMISSION'S ACCESS TIME STANDARDS FOR 800 DATA BASE SERVICE

CC DOCKET NO. 86-10

On January 21, 1992, Pacific Telesis Group (PacTel), through its operating companies Pacific Bell and Nevada Bell, filed a petition for waiver of certain provisions of the Commission's *Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking* adopted August 1, 1991 in CC Docket No. 86-10, 6 FCC Rcd 5421 (*Reconsideration Order*).

Specifically, PacTel seeks a waiver of the access time standards established in the *Reconsideration Order*. Pursuant to these standards, the Bell Operating Companies and GTE Telephone Companies are required to reduce access time under a data base system of 800 access to five seconds or less for 97% of their originating 800 traffic by March 1993. Within two years thereafter, these carriers are required to have none of their data base 800 traffic experience an access time of greater than five seconds, and the mean access time for all of their 800 data base traffic must be 2.5 seconds or less. *See* 6 FCC Rcd at 5425.

PacTel states that actual testing of the data base system indicates that data base system access times will be greater than previously projected and that consequently, PacTel cannot meet the Commission's access time standards and deadlines at a reasonable cost. PacTel asks the Commission to waive the access time requirements of the *Reconsideration Order* to permit: (i) an access time of six seconds or less for 97% of PacTel's traffic and five seconds or less for 82.1% of its traffic by March 1993, with a mean access time of 2.5 seconds; and (ii) an access time of five seconds or less for 97.7% of PacTel's traffic by March 1995, with a mean access time of one second.

PacTel states that by granting this waiver, the Commission will attain the goals set out in the *Reconsideration Order* to promote competition in the 800 service market and to promote advances in network infrastructure, while balancing PacTel's need to make economic and rational network design decisionmaking. In addition, PacTel asserts that the great majority of the public will benefit from having mean access times lower than those mandated by the Commission.

Interested parties should file comments on the petition by **February 20, 1992,** and reply comments by **March 2, 1992,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to John S. Morabito, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036. Copies of the petition can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information, contact John S. Morabito or Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

KMTR, Inc. BPCT-881021KG

For Construction permit for a new
Television station on Channel 46,
Roseburg, Oregon

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 1992; Released: February 7, 1992

By the Commission:

1. The Commission has before it for consideration the above-captioned application of KMTR, Inc., for a construction permit for a new television station on channel 46, Roseburg, Oregon.[1] The applicant is the licensee of station KMTR-TV, channel 16 (NBC), Eugene, Oregon, and proposes to operate Channel 46 as a satellite of KMTR-TV pursuant to the exception to the duopoly prohibition for satellite operations set forth in Note 5 to the Commission's multiple ownership rules, Section 73.3555. The satellite proposal is unopposed.

2. Recently, we revised our policy concerning television satellite operations. *See Television Satellite Stations*, 6 FCC Rcd 4212 (1991) (*Satellite Report and Order*) (petitions for partial stay and reconsideration pending). Under the new policy, applicants for television satellite status will be entitled to a presumption that the proposed satellite operation is in the public interest if the applicants meet the following three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. *Satellite Report and Order*, 6 FCC Rcd at 4213-14. Applications that qualify for the presumption and are unrebutted by an opposing party will be viewed favorably by the Commission. *Id.* at 4214. Even absent rebuttal, the Commission may, on its own motion, override the presumption and deny a satellite authorization request where it determines that the public interest so requires. *Id.* For the reasons set forth below, we find that the proposed operation of Channel 46 as a satellite station is consistent with our new policy.

3. With respect to the first criterion needed to qualify for the presumption, the applicant's engineering study demonstrates that there will be no overlap of the City Grade contours of KMTR-TV and the facilities proposed for Channel 46. Thus, the satellite proposal meets the first component of the presumption.

4. With respect to the second criterion, applicants can demonstrate that an area is underserved using one of two tests. The first is a "transmission test," whereby a proposed satellite's community of license is considered underserved if there are two or fewer full-service stations already licensed to it. *Satellite Report and Order*, 6 FCC Rcd at 4215. Our records show that there is only one primary-service television station licensed to Roseburg, Oregon, *i.e.*, station KPIC(TV), a satellite of station KVAL-TV, Eugene, Oregon. In addition, an application for a construction permit for a new television station on channel 36, Roseburg, Oregon, was recently granted.[2] Assuming the new station proceeds successfully in becoming fully licensed, there will be two or fewer full-service stations licensed to Roseburg. Accordingly, the applicant's proposal meets the "transmission test" demonstrating that the proposed satellite station will provide service to an underserved area.

5. Finally, to qualify for the presumption, applicants must demonstrate that no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. In the case of applicants for a new station seeking satellite authorization, an economic showing, such as a history of television station failures in the market or other information indicating that a full-service station is not likely to survive in that market, should be submitted. Here, the applicant notes that Roseburg is a small community of 16,444 persons and is located on the fringe of the Eugene, Oregon Area of Dominant Influence (ADI), the 133rd largest market.[3] It maintains that the Commission's general assumption with respect to the appropriateness of satellite stations for small markets has been specifically addressed and confirmed with respect to the Roseburg market, where the Commission has already authorized KPIC(TV) to operate as a satellite station. The applicant claims that the failure of KPIC(TV) to evolve into a full-service station after over 30 years of operation underscores the likelihood that its proposed station could not succeed as a full-service station. *See Multiple Ownership Rules*, 45 FCC 1728, 1734 (1964). Additionally, it avers that the current economic conditions necessitate satellite operation of Channel 46. In this regard, the applicant states that setbacks in the lumber industry, the area's principal business, have resulted in a depressed local economy and very dim prospects of any significant growth in either the size of the population or the health of the economy in the foreseeable future. Moreover, the applicant contends that the small size of the proposed service area of Channel 46 (3,050 square kilometers and a population of 66,966)

[1] Hereafter, we will refer to the proposed station as Channel 46.

[2] On January 16, 1992, a construction permit was issued to Metrocom of Oregon, Inc. to operate a modest facility on channel 36 with a maximum ERP of 42.7 kW and a height above average terrain of 211 meters. We note that the technical facility of the newly authorized full-service proposal for Roseburg is only slightly more ambitious than this satellite proposal.

[3] The Eugene, Oregon, ADI is served by five television stations: KEZI(TV), channel 9 (ABC), KVAL-TV, channel 13 (CBS), and KMTR(TV), channel 16 (NBC), Eugene, Oregon; KPIC(TV), channel 4, Roseburg, Oregon; and KCBY-TV, channel 11, Coos Bay, Oregon. Both KPIC(TV) and KCBY-TV are satellites of KVAL-TV.

limits the station's revenue potential.[4] The coverage limitations besetting Channel 46, the applicant asserts, are of particular concern in view of the heavy cable penetration (67 percent) in the City of Roseburg and in view of the fact that the rights of television stations to demand carriage on local cable systems have been invalidated.

6. The applicant estimates that the satellite facility it proposes could be operated at a cost of approximately $150,000 per year (including the amortized capital cost of construction) and that revenues from the insertion of local advertising spots will rise from zero for the first six months of operation to approximately $17,500 per month by year six. Based upon these estimates, it projects that a low overhead satellite station could reach the break-even point within four years of operation. In comparison, the applicant estimates that construction costs for a similarly modest full-service station would be at least twice as high and operational costs approximately three times as high as that of a satellite station. Therefore, it believes that a full-service station would not reach the break-even point until year 9 of operation, and recovery of the initial capital investment would probably never be realized.[5] We believe that the applicant has satisfied the third criterion. While this case is somewhat unusual, in that not long before the grant of this satellite authorization we have issued a construction permit on channel 36 in Roseburg for a full-service operation, we do not believe that this fact undermines the validity of the applicant's showing concerning the ability of the market to support the type of operations it proposes. We note that both the full-service station and the satellite station propose technical facilities which are substantially below the maximum available under our Rules. It appears that these modest facilities reflect the small economic base that the applicants would face in the market. Moreover, given the fact that the new full-service station will further draw upon the apparent limited revenue base in the market, we conclude that the Roseburg market is not likely to support another full-service station.

7. Therefore, we find that the applicant is entitled to the presumption that the proposed satellite operation of Channel 46 in Roseburg, Oregon, is in the public interest. In addition, no showing has been provided to rebut the presumption and we find no reason to override the presumption on our own motion. We will, however, in accordance with our general policy of not authorizing 100 percent satellites in areas served substantially by stations that qualify as conventional television operations, require that the proposed station shall construct a main studio within twelve (12) months after the date of commencement of program test authority. In view of the foregoing, having determined that the applicant is qualified in all other respects, we find that grant of the application would serve the public interest.

8. Accordingly, IT IS ORDERED, That the above-captioned application (BPCT-881021KG) for a construction permit for a new television station on channel 46, Roseburg, Oregon, IS GRANTED, subject to the following condition:

That KMTR, Inc. shall construct and maintain a main studio within twelve (12) months after the date of commencement of program test authority.

9. The Mass Media Bureau shall send copies of this Memorandum Opinion and Order to the applicant by Certified Mail -- Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[4] The applicant maintains that since Roseburg is located on the fringe of the Eugene ADI, the proposed Grade B contour of Channel 46 does not cover the most populous area of that ADI.

[5] The applicant notes that Cascade Pacific Television Associates, Inc. incurred debts of over $300,000 while operating low power stations K31AE, Roseburg, and K19AD, Tri-City, Oregon for approximately three years and has now declared bankruptcy.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Freedom of Information Act Request of Allnet Communications Services, Inc. Control No. 91-172

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 1992; Released: February 7, 1992

By the Commission:

1. The Commission has before it an Application for Review filed by Allnet Communications Services, Inc. (Allnet), appealing a September 11, 1991 Freedom of Information Act (FOIA) decision by the Chief, Common Carrier Bureau. The Bureau denied in part, and granted in part Allnet's request. As discussed herein, we affirm that ruling.

BACKGROUND

2. By request dated August 14, 1991, Allnet sought access to all documents relating to Commission decisions or other documented decisions whereby the Commission or its staff has determined that any pending Section 208 formal complaint cases do not fall within the 12 or 15 month limitation of Section 208(b) of the Communications Act, (FCCAA). The FOIA request also sought access to all documentation listing or describing all pending cases which the Commission or staff has determined do not fall within the limitations of the FCCAA. The Bureau identified and released a list of pending non-FCCAA complaints. In addition, the Bureau identified and released factual portions of two memoranda, one written by Mary Beth Hess, formerly Acting Chief, Enforcement Division (Hess memo), the other written by Wallett B. Rogers, staff attorney, Formal Complaints Division (Rogers memo). The Bureau found that the redacted portions of the memoranda were protected from disclosure pursuant to the deliberative process privilege embodied in Exemption 5 of the FOIA.[1]

DISCUSSION

3. As fully explained in the Bureau's decision, Exemption 5 protects from compulsory disclosure predecisional "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated,[2] the release of which would "stifle honest and frank communication within the agency."[3] However, a document protected by Exemption 5 loses that protection if the agency in a final decision chooses expressly to adopt or incorporate by reference [the] intra-agency memorandum.[4]

4. On review, Allnet challenges the Bureau's determination to withhold under Exemption 5 portions of the memoranda in question. Allnet maintains that the Rogers and/or Hess memoranda are memorializations of the Commission's policy regarding the classification of cases under the FCCAA. It further contends that the Rogers memo has been used as an instruction manual for the Commission's determination of which complaints are within the FCCAA. Accordingly, Allnet concludes that the protections of Exemption 5 do not apply.

5. Allnet has mischaracterized the portions of the memoranda that were withheld from disclosure. The Hess memo was prepared to assist the Deputy Bureau Chief prior to a determination whether the FCCAA should be applied to a particular class of cases. The predecisional advisory information contained in the document is squarely within the scope of the deliberative process privilege. *See Access Reports v. Department of Justice*, 926 F.2d 1192 (D.C. Cir. 1991).

6. Similarly, Allnet improperly characterizes the withheld portions of the Rogers memo. The materials withheld contain a staff attorney's analysis of the facts governing a particular complaint including his recommendation to a superior concerning the application of the FCCAA to that complaint. As in the case of the Hess memo, the opinions and recommendations contained in the withheld portions of the document comprise predecisional staff recommendations.[5] Further, as explained in the Bureau's decision, certain factual information was redacted because it is either inextricably intertwined with opinion or advisory material or is presented in such a manner that disclosure would reveal aspects of the Commission's deliberative process by exposing the thought process of the individual author. The withheld portions thus are protected pursuant to Exemption 5.

7. In its application for review, Allnet maintains that if the Rogers and/or Hess memoranda are not the instructional tools or guides used by the staff, then the Commission should redo its search and identify the document which embodies the policy governing the applicability of the FCCAA. We have reviewed the thoroughness of the search conducted in response to Allnet's FOIA request and are satisfied as to its adequacy. Despite Allnet's conjecture to the contrary, there are no additional documents among the Commission's records that are responsive to Allnet's request.

CONCLUSION

8. In view of the foregoing, the Application for Review filed by Allnet Communications Services, Inc. IS DENIED. Allnet may seek judicial review of this decision pursuant to 5 U.S.C. § 552(a)(4)(B).

9. The officials responsible for this action are the following Commissioners: Alfred C. Sikes, Chairman, James H. Quello, Sherrie P. Marshall, Andrew C. Barrett, Ervin S. Duggan.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Exemption 5 of the FOIA prevents the disclosure of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. §552(b)(5). This exemption has been extended to incorporate certain common law privileges developed in civil discovery cases, including, among others, the deliberative process privilege. *See Coastal States Gas Corp. v. Dept. of Energy*, 617 F.2d 854 (D.C. Cir. 1980).

[2] *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975).

[3] Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C.Cir. 1980).

[4] *NLRB v. Sears & Roebuck & Co.*, 421 U.S. at 161.

[5] Allnet's application for review refers to a statement made by an FCC spokesperson to the effect that the FCC's interpretation of section 208(b) is consistent with a released portion of the Rogers memo. The part of the memorandum that was disclosed, however, is only a verbatim quotation from the legislative history of the FCCAA. The FCC spokesperson's statement thus indicated only that the Commission interprets section 208(b) in accordance with the quoted language from the legislative history. The spokesperson did not state that FCC officials have "adopted" the recommendations of the particular memorandum in question, or even that the Commission's view of the scope of section 208(b) is based on that memorandum.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-320

In the Matter of	
Amendment of Section 73.202(b),	RM-7832
Table of Allotments,	
FM Broadcast Stations.	
(Brunswick, Georgia)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 29, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 6519 (1991), issued in response to a petition filed by Robert L. Yontz ("Yontz"), proposing the allotment of Channel 281A to Brunswick, Georgia, as that community's third local FM service. Yontz and C & C Communications filed supporting comments in response to the *Notice*. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 281A to Brunswick, Georgia, since it could provide the community with its third local FM service. Channel 281A can be allotted to Brunswick in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. [1]

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Brunswick, Georgia	264C1, 268C, 281A

4. The window period for filing applications will open on **March 24, 1992,** and close on **April 23, 1992.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 281A at Brunswick are North Latitude 31-10-00 and West Longitude 81-29-48.

Before the
Federal Communications Commission
Washington D. C. 20554

MM Docket No. 92-18

In the Matter of

Amendment of Section 73.202(b), RM-7899
Table of Allotments,
FM Broadcast Stations.
(Ravenswood, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 1992; Released: February 7, 1992

Comment Date: March 30, 1992
Reply Comment Date: April 14, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Rex Osborne ("petitioner") requesting the allotment of Channel 226A at Ravenswood, West Virginia, as the community's second local FM transmission service. Petitioner states that he will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 226A at Ravenswood, West Virginia, since it could provide the community with its second local FM transmission service. Channel 226A can be allotted to Ravenswood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. [1] Since Ravenswood is located within 320 kilometers (200 miles) of the U.S. -Canadian border, concurrence by the Canadian government has been requested.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ravenswood, West Virginia	291A [2]	226A, 291A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 30, 1992,** and reply comments on or before **April 14, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Rex Osborne
P. O. Box 667
Ravenswood, West Virginia 26164-0667
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] The coordinates for Channel 226A at Ravenswood are North Latitude 38-56-54 and West Longitude 81-45-48.

[2] We note that MediaCom, Inc., licensee of Station WRZZ, has filed a proposal in MM Docket No. 91-175, 6 FCC Rcd 3660 (1991), requesting the reallotment of Station WRZZ, Channel 291A, from Ravenswood to Williamstown, West Virginia.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-285

In the Matter of

Amendment of Section 73.202(b), RM-7811
Table of Allotments,
FM Broadcast Stations.
(Honolulu, Hawaii)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 30, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 5634 (1991), issued in response to a petition for rule making filed by Christian Broadcasting Association ("petitioner"), licensee of Station KAIM(FM), Channel 238C1, Honolulu, Hawaii, proposing the substitution of Channel 238C for Channel 238C1 at Honolulu and modification of its license to specify the higher powered channel. Petitioner filed comments and reply comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 238C for Channel 238C1 at Honolulu, since it could provide the community with an additional wide coverage area FM service. Channel 238C can be allotted to Honolulu in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.0 kilometers (16.2 miles) west to accommodate petitioner's desired transmitter site. [1] We will modify the license for Station KAIM(FM) to specify operation on Channel 238C in accordance with Section 1.420(g) of the Commission's Rules. We note that the proposed transmitter site for Station KAIM(FM) is located within 80 kilometers of the Federal Communications Commission's monitoring station at Waipahu, Oahu, Hawaii. Therefore, petitioner should refer to the provisions of Section 73.1030(c)(1)-(5) of the Rules governing protection of Federal Communications Commission Monitoring Stations when filing its application.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Honolulu, Hawaii	226C1, 230C1 234C1, 238C 248C1, 253C1 258C1, 262C1 286C, 290C

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KAIM(FM), Honolulu, Hawaii, IS MODIFIED, to specify operation on Channel 238C in lieu of Channel 238C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Christian Broadcasting Association, licensee of Station KAIM(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 238C at Honolulu are North Latitude 21-23-42 and West Longitude 158-05-55.

Before the
Federal Communications Commission
Washington D. C. 20554

MM Docket No. 90-594

In the Matter of

Amendment of Section 73.202(b),	RM-7250
Table of Allotments,	RM-7660
FM Broadcast Stations.	
(Oakdale and Campti, Louisiana)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1992 **Released: February 7, 1992**

By the Assistant Chief, Allocations Branch:

1. At the request of Oakdale Limited Partnership ("petitioner"), former licensee of Station KICR-FM, the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 7284 (1990), proposing the substitution of Channel 254C1 for Channel 254C2 at Oakdale, and modification of its authorization to specify the higher powered channel. B & D Communications, Inc. ("B & D") successor-in-interest to the petitioner,[2] filed comments stating its intention to apply for Channel 254C1, if allotted. Fred Hannel, d/b/a Campti Broadcasting Company ("Campti Broadcasting"), filed a counterproposal.[3] B & D filed responsive comments to Campti Broadcasting's counterproposal.

2. In its counterproposal, Campti Broadcasting requests the allotment of Channel 253C3 to Campti, Louisiana, as that community's first local transmission aural service. In support of its request, Campti Broadcasting states Campti has a population of 1,078 persons, and is located in Natchitoches Parish, which has a population of 39,863 persons. In addition, Campti Broadcasting notes it proposal would provide an additional aural reception service to approximately 53,000 persons. Campti Broadcasting argues that its proposal offers a more efficient distribution of the aural services and indicates its intention to apply for Channel 253C3, if allotted to Campti, Louisiana.

3. In response to Campti Broadcasting's counterproposal, B & D states that Campti has a population of less than 1,000 persons.[4] Alternatively B & D suggests the allotment of Channel 288A to Coushatta, with a specific site restriction, arguing that the Class A station could provide a superior signal to Campti than could be provided by a Class C3 facility. B & D states its alternative proposal would allow the Oakdale upgrade while providing a premium signal to Campti.[5]

4. We believe that the public interest would be served by the provision of a first local service at Campti as well as the expansion of service by Station KICR-FM at Oakdale. However, neither the proponents nor the Commission's staff has been able to identify an alternate channel for allotment to either community. Therefore, we must comparatively consider these proposals. Under the Commission's FM allotment priorities, a first local FM service is generally preferred over a proposal to upgrade an existing facility.[6] If the proponent for a channel upgrade is in conflict with a proposal for a new allotment, the upgrade proponent may demonstrate that its proposal should be preferred by providing a showing of need for the proposed increase in existing service. This could take the form of a comparison indicating which new areas are to be covered and the extent to which these areas are currently unserved or underserved. In the absence of such a showing of need for the proposed increase in service, a conflicting new allotment would be favored since it represents a new service.[7] B & D has not made such a showing. Therefore, we find that the provision of a new first service at Campti must be preferred over a proposal to upgrade existing service at Oakdale.

5. In consideration of the above, we believe the public interest would be served by the allotment of Channel 253C3 to Campti, Louisiana, since it would provide the community with its first aural transmission service. Channel 253C3 can be allotted to Campti in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.9 kilometers (12.3 miles) west to accommodate Campti Broadcasting's desired site.[8] While it may be true that a Class A channel could be allotted to Coushatta in order to provide service to both Coushatta and Campti, we note that no interest in the use of such a channel has been expressed. A showing of continuing interest is required before a channel can be

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[1] The community of Campti, Louisiana, has been added to the caption.

[2] B & D is now the licensee of Station KICR-FM, pursuant to the Commission's grant of the assignment of petitioner's construction permit on January 26, 1990.

[3] Public Notice of the counterproposal was given on March 6, 1991, Report No. 1839.

[4] According to the 1980 U.S. Census, Campti is an incorporated community and has a population of 929 persons.

[5] B & D argues that "it is not entirely clear" why its proposal was released in a separate *Notice*, rather than treated as a counterproposal in MM Docket No. 89-447. We issued a *Notice of Proposed Rule Making* in MM Docket No. 89-447, 4 FCC Rcd 7481 (1989), proposing the substitution of Channel 235C3 for Channel 222A at Coushatta, Louisiana. Since this was a nonadjacent channel upgrade the proponent noted that Channel 253C3 could be allotted to Coushatta to accommodate any additional expressions of interest. Petitioner filed comments in that proceeding requesting the substitution of Channel 254C1 for Channel 254C2 at Oakdale, Louisiana, which was mutually exclusive with Channel 253C3 at Coushatta. However, no additional expressions of interest were filed and there was no need to consider the alternate channel. Since there was no technical conflict between the Coushatta proposal and petitioner's, the Commission issued a separate *Notice* to address the proposed Oakdale upgrade. *See Report and Order* in MM Docket No. 89-447, 5 FCC Rcd 5418 (1990). We note that petitioner did not file a petition for reconsideration of the *Report and Order*.

[6] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982); *see also Benton, Arkansas, et al;* 3 FCC Rcd 4840 (1988), *recon. pend.*

[7] *See Benton, Arkansas, supra.*

[8] The coordinates for Channel 253C3 at Campti are North Latitude 31-55-26 and West Longitude 93-19-25.

allotted, and absent such an expression of interest, it is the Commission's policy to refrain from allotting the channel.[9] Therefore, we will not allot Channel 288A to Coushatta, Louisiana.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Campti, Louisiana	253C3

7. The window period for filing applications for Channel 253C3 at Campti, Louisiana, will open on **March 24, 1992,** and close on **April 23, 1992.**

8. IT IS FURTHER ORDERED, That the petition for Rule Making filed by Oakdale Limited Partnership, (RM-7250) requesting the allotment of Channel 254C1 to Oakdale, Louisiana, IS DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[9] *See, e.g., Murray, Kentucky,* 3 FCC Rcd 1010 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-337

In the Matter of

Amendment of Section 73.202(b), RM-7138
Table of Allotments,
FM Broadcast Stations.
(Muskegon Heights, Michigan)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 6634 (1991), proposing the substitution of Channel 269B1 for Channel 269A, Muskegon Heights, Michigan, and modification of the license for station WQWQ-FM to specify operation on the higher class channel. [1] The *Notice* was issued in response to a petition filed by Pathfinder Communications Corporation ("petitioner").[2] Petitioner filed comments reiterating its interest in Channel 269B1 at Muskegon Heights. No other comments were received.

2. We believe the public interest would be served by substituting Channel 269B1 for Channel 269A at Muskegon Heights, Michigan, in order to provide the community with its first wide coverage area station. As indicated in the *Notice*, Channel 269B1 can be allotted to Muskegon Heights, Michigan, consistent with the Commission's spacing requirements at petitioner's specified site. [3] Since Muskegon Heights is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. We shall authorize a modification of petitioner's license for Station WQWQ-FM, Muskegon Heights, Michigan, to specify operation on Channel 269B1 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Muskegon Heights, Michigan	269B1

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WQWQ-FM, Muskegon Heights, Michigan, IS MODIFIED to specify operation on Channel 269B1 in lieu of Channel 269A subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Pathfinder Communications Corporation IS DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] Channel 269A was allotted to Muskegon Heights, Michigan, in Docket No. 19160, *Second Report and Order*, released November 5, 1971. The FM Table of Allotments lists Channel 269A at Muskegon instead of Muskegon Heights. The Table will be corrected in this proceeding.

[2] Petitioner initially filed this petition when Furniture City Broadcasting Company was the licensee of Station WQWQ-FM. Petitioner requested the substitution to enable its Station WCUZ-FM, Grand Rapids, Michigan, to relocate its transmitter in order to provide full coverage to its community of license. The petition was returned by letter based on the fact that our policy does not provide for the forced upgrade of a station to accommodate another station's desire to upgrade or relocate its transmitter. Petitioner filed a petition for reconsideration of that denial which was placed on public notice November 24, 1989 (Report No. 1802).

On March 30, 1990, the license for Station WQWQ-FM was assigned to Pathfinder Communications Corporation from Furniture City Broadcasting Company. Therefore, as the licensee, petitioner is now able to request this substitution. As a result, we regard the petition for reconsideration as moot and will dismiss it herein.

[3] The coordinates for Channel 269B1 are 43-16-39 and 86-20-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-229

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments, RM-7761
FM Broadcast Stations.
(Potosi and Waynesville,
Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 29, 1992; Released: February 7, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 6 FCC Rcd 4752 (1991), proposing the substitution of Channel 249C3 for Channel 249A at Potosi, Missouri. The *Notice* was issued in response to a petition filed by Prime Time Radio ("petitioner"). Petitioner also requested modification of its construction permit (BPH-891222MF) for Station KWVB to specify operation on the higher class channel. Petitioner filed comments restating its interest in the allotment of Channel 249C3. B-D, Inc., filed comments in response to the *Order to Show Cause*.

2. As stated in the *Notice*, Channel 249C3 can be allotted to Potosi in compliance with the Commission's spacing requirements provided Channel 249A at Waynesville, Missouri, is deleted. B-D, Inc., is the licensee of Station KFBD-FM, Channel 249A, Waynesville. Petitioner proposed the substitution of Channel 250A for Channel 249A at Waynesville, which can be used at the current site of Station KFBD-FM.

3. B-D, Inc., states that it has no objection to the proposed frequency change provided the petitioner reimburse B-D, Inc., for its costs in connection with the substitution at Waynesville. B-D, Inc., further states that it has obtained the agreement of Prime Time Radio to such reimbursement and notes that the proposed frequency change appears to be in the public interest.

4. After careful consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Potosi, Missouri, as a wide coverage area FM service. In order to accomplish the substitution at Potosi, Channel 250A must be substituted for Channel 249A at Waynesville, Missouri. Both substitutions can be made in compliance with the Commission's minimum distance spacing requirements. [1] In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit for Station KWVB at Potosi, Missouri, to specify operation on Channel 249C3. We shall also modify the license for Station KFBD-FM, Waynesville, Missouri, to specify operation on Channel 250A in lieu of Channel 249A in accordance with the Commission's Rules.

5. Commission policy requires that Station KFBD-FM be reimbursed for the reasonable cost of changing frequencies from one class A channel to another. Prime Time Radio has acknowledged its responsibility to reimburse Station KFBD-FM, Waynesville, for the reasonable costs in changing frequency.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 23, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Potosi, Missouri	249C3
Waynesville, Missouri	250A, 272A

7. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KWVB, Potosi, Missouri, IS MODIFIED to specify operation on Channel 249C3 in lieu of Channel 249A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KFBD-FM, Waynesville, Missouri, IS MODIFIED, to specify operation on Channel 250A in lieu of Channel 249A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-780828AK except for the channel as specified above. Any

[1] The coordinates for Channel 249C3 at Potosi are 37-52-51 and 90-47-01. The coordinates for Channel 250A at Waynesville are 37-49-42 and 92-10-27.

changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-780828AK, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission, Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

B-D, Inc.
Station KFBD-FM
Box 58
Linn Creek, Missouri 65052

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Prime Time Radio, permittee of Station KWVB, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-64

In the Matter of

Policies and Rules Concerning
Changing Long Distance Carriers

REPORT AND ORDER

Adopted: December 12, 1991; Released: January 9, 1992

By the Commission:

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I. INTRODUCTION

1. On March 25, 1991, this Commission released a Notice of Proposed Rulemaking[1] to consider revising primary interexchange carrier (PIC) change rules for interstate long distance service. We now adopt modifications of the proposals in the *PIC Change NPRM*. Specifically, we now require interexchange carriers (IXCs) that submit PIC change orders on behalf of customers to local exchange carriers (LECs) to institute one of four confirmation procedures before submitting orders to the LECs. We believe that these revisions to our PIC change procedures will provide additional protection to consumers from unauthorized switching of their long distance carriers beyond existing safeguards and without unreasonably burdening competition in the interexchange market.

II. BACKGROUND

2. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,[2] set forth rules and procedures for implementing equal access and presubscription to an IXC. The original allocation plan adopted by the Commission required IXCs to have a letter of agency (LOA) signed by the customer on file before submitting a PIC change order to the LEC on behalf of the customer. *Allocation Order*, Appendix B, 101 FCC 2d at 929. After vigorous objections from IXCs, including American Telephone & Telegraph Company (AT&T), that this requirement would stifle competition, we modified the requirement to allow IXCs to place PIC changes if they had "instituted steps to obtain signed LOAs." *Waiver Order*, 101 FCC 2d at 942. In the subsequent *Illinois CUB Order*,[3] we denied a petition filed by the Illinois Citizens Utility Board to revise the Commission's carrier selection rules, finding that the rules were intended to "facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement."[4]

3. Despite the adoption of the consumer protection mechanisms set forth in the *Illinois CUB Order*, the Commission continued to receive complaints that some customers had been switched to other carriers without the

[1] American Telephone and Telegraph Company, Petition for Rulemaking, CC Docket No. 91-64, Notice of Proposed Rulemaking, 6 FCC Rcd 1689 (1991) (*PIC Change NPRM*).

[2] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase, 1, 101 FCC 2d 935 (1985) (*Waiver Order*).

[3] *See* Illinois Citizens Utility Board Petition for Rulemaking, Memorandum Opinion and Order, 2 FCC Rcd 1726 (Com.Car.Bur. 1987) (*Illinois CUB Order*).

[4] *See Illinois CUB Order* at 1729.

customers' permission. On January 10, 1990, AT&T filed a petition requesting revision of the Commission's carrier selection rules.[5] It proposed returning to the Commission's original rules, allowing an IXC to submit PIC change orders to a LEC on a customer's behalf only when the IXC has an LOA for that customer on file. AT&T alleged that there had been an increase in unauthorized switching of customers during 1989, causing inconvenience for customers and creating expense for LECs who must resolve the resultant disputes. AT&T Petition at 7. Comments and replies were filed in March 1990.

4. On December 11, 1990, AT&T and MCI informed the Commission that they had reached an out-of-court settlement of their related civil suits against each other. They agreed, as part of their settlement, to propose to the Commission certain safeguards designed to protect customers against being switched without permission (the AT&T-MCI proposal):[6] (1) a choice of three verification procedures to be instituted by IXCs before placing PIC change orders generated by telemarketing with LECs on behalf of customers: (a) obtaining an LOA from the customer; (b) obtaining the customer's authorization by use of an 800 number; and (c) obtaining the customer's authorization by use of an independent third party verifier; (2) a monthly audit of PIC change orders generated by telemarketing and placed by IXCs on behalf of customers; and (3) a Quality Assurance Program to monitor IXCs' telemarketing practices for use of blatantly false and misleading claims. We also received an alternative proposal from NARUC and others: (1) within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package containing at least the names of the customer's current IXC and the new IXC, a description of any terms, conditions, or charges incurred, the name of the person ordering the change, the name, address, and telephone number of both the customer and the new IXC, and a postpaid postcard which the customer can use to deny, cancel, or confirm a service order; and (2) the IXC must wait 14 days after the information package is mailed to customers before submitting their PIC change orders to LECs.

5. We tentatively concluded in the *PIC Change NPRM* that a modification of carrier selection procedures is necessary to protect the interests of consumers. We also concluded that the safeguards presented in the AT&T-MCI proposal would be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its January 10, 1990 petition for rulemaking. Therefore, we sought comment on our tentative conclusion that these revised procedures would serve to diminish substantially the problem of unauthorized switching while continuing to encourage carriers to compete for customers' business. In addition, we invited comment regarding alternative procedures to discourage unauthorized switching, particularly alternatives suggested in comments filed in response to AT&T's petition.

III. SUMMARY OF DECISION

6. We have reviewed the AT&T-MCI proposal, an alternative proposal submitted by NARUC, the comments and the reply comments filed in response to the *PIC Change NPRM*, and all *ex parte* presentations. In this decision, we affirm our tentative conclusion that a modification of the carrier selection procedures is necessary to protect the interests of consumers. We also affirm our tentative conclusion that the verification procedures proposed by AT&T and MCI in their settlement agreement will be more effective and less burdensome than the LOA requirement originally requested by AT&T in its petition for rulemaking. Finally, we conclude as well that the safeguards suggested in the NARUC proposal should be added to the AT&T-MCI proposed procedures as an additional verification option.

IV. COMMENTS

A. Consumer Protection Under the AT&T-MCI Proposal

7. Parties who commented disagree about whether the procedures set out in the AT&T-MCI proposal would be adequate to protect consumers from unauthorized switching. AT&T, Eastern Telephone Systems (Eastern), and Bell Atlantic maintain that requiring IXCs to obtain some form of independent, unambiguous evidence of customer authorization *before* changing customers' PIC designations has the potential to eliminate most disputes between IXCs and their customers.[7] New York State Department of Public Service (NYSDPS) urges adoption of the AT&T-MCI proposal so that IXCs which are not parties to the agreement will also be obligated to abide by it.[8] Metromedia Communications Corporation (Metromedia), however, argues that any rules adopted by the Commission should be targeted at eliminating unauthorized switching of IXC service which results from fraud or negligence.[9] It contends that the threat of litigation may be a more effective deterrent to unauthorized switching than any rules which the Commission might devise.[10]

8. Although US Sprint (Sprint) argues that the requirements for mandatory disclosures [suggested in the proposals by AT&T-MCI and by NARUC and others in the *PIC Change NPRM*] should apply only to outbound telemarketing efforts of IXCs,[11] Representative Bob Wise, West Virginia (Rep. Wise) contends that the disclosures to a prospective customer should also apply to mail and in-person solicitations as well.[12] Allnet Communication Services, Inc. (Allnet) would have the Commission pre-

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[5] AT&T simultaneously filed suit against MCI Telecommunications Corporation (MCI) in Federal District Court in New Jersey, alleging unfair telemarketing practices and unauthorized switching. MCI had previously filed suit against AT&T on October 10, 1989, alleging deceptive advertising practices.

[6] *See* Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, December 12, 1990 (MCI Letter).

[7] AT&T Comments at 4. *See also* Eastern Comments at 3; Bell Atlantic Comments at 1.

[8] NYSDPS comments at 1.

[9] Metromedia Reply at 1-5.

[10] Metromedia Comments at 6-7. *See also* Allnet Comments at 11-12.

[11] Sprint Comments at 2-3.

[12] Rep. Wise Comments at 2. *See also* PRTC Comments at 2.

scribe the wording of the preamble of the disclosures for every telemarketed *new* sales call to prevent divergence in interpretation of the Commission's requirements.[13]

9. Convergent Communications, Inc. (Convergent) comments that although the proposed AT&T-MCI script is adequate for verification, IXCs should be allowed to provide additional information.[14] Allnet, however, claims that the proposed verification script contains leading questions and penalizes the customer for giving the "wrong" answer by returning the customer to the IXC's salesperson.[15]

10. Public Utilities Commission of Ohio (PUCO) suggests that IXCs be required to file reports on customer complaints to the FCC, and that, if an IXC is repeatedly involved in unauthorized switching, it should be allowed to switch customers to its network *only* upon written authorization by the potential customers.[16] Sprint counters that it would be expensive and time-consuming for IXCs to construct the data gathering and reporting systems needed to furnish the Commission with the information suggested by PUCO, and that the complaints filed with the Commission provide it with adequate data on trends in the volume of complaints.[17]

11. Bell Atlantic maintains that IXCs that employ either electronic or third party verification should be required to retain records of those verifications and to provide them to local exchange carriers (LECs) when customers dispute PIC changes. It suggests that these records should, at a minimum, contain the same information as an LOA and should be in a form agreed to by the LEC.[18] Sprint argues, however, that IXCs should only be required to retain all records and data for a six-month period after submission of the PIC change order, except in instances of initial conversion of an end office to equal access, for which a nine-month retention period would be more appropriate.[19]

B. Adoption of All or Part of the AT&T-MCI Proposal

12. In general, commenting parties suggest some variation in the proposal. Bell Atlantic avers that PIC changes should be initiated only by end users, IXCs, and agents designated by IXCs to initiate PIC changes on behalf of the IXCs.[20] MCI comments that once an IXC certifies to the LEC that it has instituted the AT&T-MCI proposal procedures, the LEC should be required to honor all PIC change requests submitted by that IXC.[21] Rep. Wise notes that because confirmation of customers' desire to switch carriers is more effectively made after a period of time has elapsed, a 24-hour waiting period should be instituted between the sale and verification of the change order.[22]

13. America's Carriers Telecommunications Association (ACTA) argues that each IXC should be allowed to select any verification procedure that meets its needs and those of its customers, even if that procedure is not one of the alternatives suggested in the *PIC Change NPRM*.[23] *Ameritech Operating Companies (Ameritech) is concerned, however, that permitting different and potentially numerous verification procedures would result in increased LEC costs and time to resolve billing disputes.*[24] *BellSouth would not oppose electronic verification or third-party verification, provided the rule clarifies the circumstances in which IXCs can employ such methods and the criteria LECs should use to determine the efficacy of such verification.*[25]

14. Allnet objects that it is both inefficient and unreasonable to require IXCs to submit certification information to the more than 1400 LECs; it would have the Commission serve as a central clearing house for all self- or third-party compliance certification submissions.[26] AT&T would also have the Commission monitor closely, by means of reports from LECs and IXCs, the rate of unauthorized switching of IXC service after the procedures are implemented and, if it appears necessary, promptly revisit this matter.[27]

(1) AT&T-MCI Verification Procedures

(a) Written Authorization

15. Commenting parties differ regarding the effectiveness of the LOA. Michigan Public Service Commission Staff (MPSCS) asserts that an LOA signed by the customer is the preferred method of verification because it is simple, can be easily documented, and clearly conveys the intent of the customer.[28] AT&T argues that because verbal authorizations have not yet been proved reliable, written authorization should be the only evidence sufficient to relieve IXCs of liability for LEC charges for restoring improperly switched customers to their original PICs. General Communication, Inc. (GCI) contends that a requirement for LOAs favors the dominant carrier and is thus anticompetitive.[29] Moreover, argues Communique Telecommunications, Inc. (CTI), signed LOAs are not sufficient to confirm customer orders to switch carriers when customers deny placing orders.[30]

16. Bell Atlantic maintains that the Commission should prescribe the form and the content of a valid LOA, which should be a separate signed document whose only purpose is to authorize an IXC to initiate a PIC change. For example, says Bell Atlantic, the Commission should prohibit the practice of some IXCs who use a customer's endorsement on the back of a promotional check as authorization for a PIC change.[31] Conversely, MCI argues that IXCs should be permitted to use check payments to induce customers to change their PIC, and that because the LOA language or equivalent appears on the check

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13 Allnet Comments at 11 n.11.
14 Convergent Comments at 8-9. *See also* Sprint Comments at 7.
15 Allnet Comments at 5-6.
16 PUCO Comments at 3.
17 Sprint Reply at 6.
18 Bell Atlantic Comments at 2. *See also* SWB Comments at 2.
19 Sprint Comments at 7-8.
20 Bell Atlantic Comments at 5-6 and Reply at 4. *See also* IRA Comments at 7-9; CBT Reply at 3; USTA Comments at 2.
21 MCI Comments at 3-4.
22 Rep. Wise Comments at 2.
23 ACTA Comments at 2-7. *See also* USTA Comments at 2-3; CTI Comments at 2.
24 Ameritech Reply at 4.
25 BellSouth Reply at 1-2. *See also* PRTC Comments at 1-2.
26 Allnet Comments at 10-11.
27 AT&T Comments at 8.
28 MPSCS Comments at 3.
29 GCI Comments at 2-3. *See also* Convergent Comments at 6, Sprint Comments at 4.
30 CTI Comments at 4.
31 Bell Atlantic Comments at 6. *See also* USTA Reply at 3-4.

which the consumer must endorse to receive the promotional offer, the consumer is aware that he or she is authorizing a PIC change in cashing the check.[32]

(b) Customer-dialed 800 Number

17. No party, other than AT&T and MCI who submitted this proposal, offered arguments in support of a customer-dialed 800 number. Such a system is expensive, asserts Sprint, and does not lend itself to good customer relations with newly-won customers.[33] Eastern is skeptical about this procedure, particularly because there is no human "voice" confirming the sale, and because the originating automatic number identification (ANI) is automatically recorded.[34] In addition, notes GCI, customers must have touch tone service in order to use answer verification queries once the 800 number is dialed.[35] Convergent argues that smaller IXCs and resellers may not have the traffic volumes necessary to sustain such facilities, and use of these facilities may not be the most efficient or economical way for them to conduct their operations.[36]

(c) Independent Third Party v. In-house Verification

18. Convergent argues that third party verification is clearly tailored to large carriers with substantial resources and volume.[37] GCI asserts that the use of an unaffiliated verification agency interferes with the customer-carrier relationship by creating a climate in which consumers will be led to believe that the IXC carrier industry, as a whole, is unreliable or worse.[38]

19. Sprint contends that IXCs should have the flexibility either to hire an independent third party or to perform the verifications "in-house" by salaried employees who earn no commissions based on telemarketing sales. It asserts that in-house personnel would be better able to answer any questions the customer may raise during the course of the call about the long distance services provided by the carrier, and, because they would have to live with the problems created by confused or misled customers, may be more likely to do a more thorough job of verification. Moreover, notes Sprint, use of independent third party verifiers would be more expensive than using in-house personnel because a third party verification firm would treat this activity as a profit center.[39] AT&T asserts that permitting IXCs to use their own employees to perform "independent confirmations" would undermine the crucial purpose of the rule: to create *independent*, unambiguous evidence of customer choice and to eliminate or reduce the abuses caused by overzealous carrier marketing activities. Furthermore, AT&T maintains that the record contains no evidence or basis to assume that the competitive telemarketing industry will be unable to provide the required services at reasonable cost.[40]

20. Several other parties support on-line verification enhanced by recording the call. For example, CTI maintains that recording the sales call when the consumer makes his or her "buy" decision makes it difficult for a customer to deny placing the order. It therefore suggests that the Commission allow the recording of telephone solicitations without a "beep tone" warning to prevent fraud against long distance companies as well as unauthorized switching of IXC service.[41]

(2) Auditing Procedures; Quality Assurance Program (QAP)

21. There is little support among commenting parties for the broad application of the proposed auditing procedures or the Quality Assurance Program. Sprint recommends that, to avoid burdening smaller carriers or carriers making lesser use of outbound telemarketing, the frequency of audits should vary with the volume of outbound telemarketing calls.[42] Allnet protests that the audit requirements are "attestation audits" which, because they require the IXC to report its violations to the Commission, are of questionable value.[43] Metromedia argues that implementation of an independent audit procedure is not affordable for smaller IXCs.[44]

22. Allnet asserts that the QAP requires "self-attestation" reports which are of questionable value. Secondly, Allnet asserts that it is unclear how violations of the prohibition on "blatant falsehoods" would be monitored and the prohibitions actually enforced. Thirdly, Allnet notes that the QAP appears to be limited to telemarketing applications, although blatant falsehoods are also improper in other sales situations. Finally, maintains Allnet, the AT&T-MCI proposal contains no penalties for having violated the QAP.[45]

23. Convergent suggests that the QAP should not apply to IXCs making less than 1,000,000 outgoing telemarketing calls per year or to non-facilities-based resellers. It argues that if the QAP is required for small or non-facilities-based resellers, the Commission should allow the QAP to be performed "in house" by responsible executives.[46]

24. ACTA asserts that, in documented instances of trade disparagement and misrepresentation, the Commission should take action against offending carriers. ACTA suggests, for example, that the Commission require an offending competitor to provide a written clarification to the customers of an IXC "victimized" by such a competitor's use and reliance on erroneous information or representations.[47] Puerto Rico Telephone Company (PRTC) believes that imposing the QAP will enable LECs and the Commission to identify and inform the public about the most abusive carrier marketing practices.[48] AT&T states that although industry-wide institution of QAPs is desirable, it is not as critical as stringent enforcement of the

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32 MCI Reply at 3.
33 Sprint Comments at 4. *See also* Metromedia Reply at 8-9.
34 Eastern Comments at 5-6.
35 GCI Comments at 3.
36 Convergent Comments at 6.
37 Convergent Comments at 6.
38 GCI Comments at 2-3.
39 Sprint Comments at 4-6.
40 AT&T Reply at 6-7.
41 CTI Comments at 4-7. *See also* ACTA Comments at 3; Metromedia Reply at 19; Convergent Comments at 8-9.
42 Sprint Comments at 8-9. *See also* CompTel Comments at 4.
43 Allnet Comments at 6-7.
44 Metromedia Reply at 7-8.
45 Allnet Comments at 6-8. *See also* Sprint Comments at 9-10.
46 Convergent Comments at 4-9.
47 ACTA Comments at 8-9. *See also* Rep. Wise Comments at 2.
48 PRTC Comments at 3.

order confirmation procedures and Commission monitoring of the amount of unauthorized switching that persists after those procedures are in place.[49]

C. Unauthorized PIC Change Charges

25. Sprint maintains that the current requirement that the IXC pay all change charges associated with disputed changes for which the IXC is unable to produce an LOA should remain unchanged. Sprint argues that an LOA would still provide the LEC with the most reliable guidepost in determining who should bear the PIC change charges in a disputed case.[50] Convergent would, however, allow recorded oral proof in addition to written proof of authorization.[51]

26. Bell Atlantic argues that any final rules should not disturb its charges for changing the initial unauthorized switching of IXC service nor its separate tariffs for an "unauthorized change charge" to cover the costs of investigating the dispute and returning the customer to its carrier of choice.[52] It also suggests that the Commission could reduce disputes over the authenticity of third party and electronic verification by defining the "customer" who must verify PIC changes as the billed party or a spouse -- not *any* adult resident of the household, as the *PIC Change NPRM* suggests.[53] At a minimum, states Bell Atlantic, the person verifying the PIC change should be asked if he or she has authority to select an IXC.[54]

27. PUCO suggests as an additional requirement that IXCs who switch customers without authorization should be required to make refunds that include the LEC charge for a carrier switch as well as any incremental charges, calculated on a call-by-call basis, that are incurred by the customer as a result of rates higher than the original carrier's rates.[55] Sprint protests that the administrative costs of such a requirement would far outweigh its benefits.[56]

28. CompTel observes that, with the adoption of new rules designed to minimize IXC errors in authorizing changes, holding IXCs strictly liable for unauthorized PIC changes may no longer be justified.[57] MCI argues that IXCs should not be required to pay the charges for disputed PIC changes imposed by some LECs if IXCs show that they followed one of the approved verification methods. In effect, says MCI, there would arise an unrebuttable presumption that any mistake or error was not that of the IXC.[58] Bell Atlantic disagrees, contending that because disputes over authorization, caused by IXCs' marketing programs, are still likely to arise, IXCs should bear the resulting costs. It notes that IXCs are not now "strictly liable" for charges for unauthorized switching of service, but are liable only if they fail to produce a valid LOA.[59]

29. Finally, NTCA suggests that a charge that penalizes IXCs using marketing techniques that result in unauthorized switching will be the most effective method of reducing unscrupulous sales practices.[60] AT&T counters that even if "punitive" charges were justified and could be effective, there is no basis for permitting LECs to impose the charges.[61]

D. Application of Procedures to Customer-owned Payphones

30. MCI contends that applying the AT&T-MCI proposal to payphone customers would not justify the additional costs and is unnecessary because commercial customers are more sophisticated buyers of telecommunications services.[62] Because disputes between the end user and the IXC concerning PIC changes place the LECs in the position of mediating between the two parties, SWB and NYNEX support applying the proposed requirements to *all* carriers and payphone providers.[63] Bell Atlantic, Ameritech, and MPSCS argue that the Commission should impose a more stringent requirement for payphones, *viz.* that IXCs be required to have a signed LOA prior to submitting the PIC change order.[64]

E. Alternatives Proposed by NARUC and Other Parties

31. We invited comment regarding whether the various alternatives proposed by NARUC and other parties would be preferable to the AT&T-MCI proposal. In particular, we sought comment on the following procedures: (1) the required mailing of an information packet to customers agreeing to change service within 3 days of the IXC telemarketing call; and (2) a 14-day waiting period before IXCs submit PIC change orders to LECs.

32. NARUC asserts that its proposal[65] would only slightly modify the current Rules by standardizing what is required of IXCs that submit PIC change orders to LECs

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[49] AT&T Reply at 7 n. *.

[50] Sprint Comments at 6-7. *See also* CBT Reply at 2; Rep. Wise Comments at 2; SWB Comments at 1-2; SWB Reply at 4-5; AT&T Comments at 7-8; NECA Comments at 3-6; GCI Comments at 4.

[51] Convergent Comments at 9.

[52] Bell Atlantic Comments at 3. *See also* BellSouth Reply at 2, USTA Comments at 2.

[53] *PIC Selection NPRM*, App. A at 7.

[54] Bell Atlantic Comments at 2-3. *See also* Ameritech Comments at 2-4 and Reply at 1-3, USTA Reply at 3.

[55] PUCO Comments at 4.

[56] Sprint Reply at 6-7.

[57] CompTel Comments at 7-8.

[58] MCI Comments at 3-4 and Reply at 3-4.

[59] Bell Atlantic Reply at 2.

[60] NTCA Comments at 3. *See also* NARUC Comments at 4.

[61] AT&T Reply at 8. *See also* Metromedia Reply at 11.

[62] MCI Reply at 2-3.

[63] SWBT Comments at 2-3; NYNEX Comments at 2. *See also* USTA Reply at 3.

[64] Bell Atlantic Comments at 4-5; Ameritech Comments at 6-8; MPSCS Comments at 8. *See also* AT&T Comments at 6-7; Sprint Reply at 4.

[65] The NARUC proposal requires that, within 3 business days of the customer's request for a PIC change, the IXC must send each new customer an information package containing at least the following information concerning the requested change:

a) the name of the customer's current IXC;

b) the name of the newly requested IXC;

c) a description of any terms, conditions, or charges that will be incurred;

d) the name of the person ordering the change;

e) the name, address, and telephone number of both the customer and the newly requested IXC; and

f) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order.

on the basis of customers' verbal authorizations. NARUC argues that under its proposal it would be more difficult for IXCs to switch consumers' service without authorization, but that, at the same time, customers could continue to verbally order their long distance carrier.[66] In addition, GCI notes that the NARUC proposal could be applied to all carriers regardless of size, does not provide a competitive advantage to dominant carriers, and does not create a negative marketing environment for IXC services.[67]

33. Ameritech asserts that the NARUC proposal is inconsistent with the basic philosophy of the proposed rules -- that customers should receive an opportunity to verify their order through some form of positive response, whether through an LOA, electronic verification, or third party verification.[68] Sprint cautions that if the NARUC proposal is added as a confirmation option, it should only be used in conjunction with outbound telemarketing and should be available to all IXCs regardless of size.[69] NECA contends that customers might overlook the information package, and that LECs would have no way to verify whether the information was in fact sent.[70] AT&T speculates that requiring IXCs to hold and "track" PIC change orders pending customer receipt and possible return of cancellation instructions may not be less costly than the written authorization option in the *PIC Change NPRM*.[71]

34. SWB agrees that requiring IXCs to send the information package to customers when they request their PICs be changed would reduce customer confusion and the risk of an unauthorized switching of IXC service.[72] ACTA notes that requiring a newly selected PIC to confirm its selection in writing to the customer has the merit of being simple, effective, and least burdensome, particularly for smaller carriers.[73] Sprint comments, however, that much of the information NARUC would require to be sent to the customer is also required by the AT&T-MCI proposal,[74] and Sprint questions the feasibility as well as the necessity of requiring the newly chosen IXC to inform the customer of the name of its current IXC.[75]

35. MPSCS strongly supports the return postcard and the 14-day waiting period requirements. It also comments that the waiting period could be reduced to a week by customers sending a return postcard to IXCs confirming their acceptances.[76] Convergent contends that 10 days is an adequate "cooling off" period,[77] whereas IRA argues that a five-day waiting period is sufficient to allow customers' "second thoughts."[78] Finally, GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated) (GTE Hawaiian) reports that it has been using procedures similar to those suggested by NARUC, with a 10-day waiting period, for all verbal customer consents, and that customer complaints of unauthorized switching of IXC service have been almost nonexistent.[79]

36. Rep. Wise suggested that the NARUC proposal should be modified so that:[80]

> a) within 2 days of the telephone solicitation, the IXC sends the information package to the customer by first class mail;
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> b) the IXC clearly marks both the envelope and the interior letter to notify the customer that action is being taken in regard to changing the customer's long distance carrier;
>
> c) the information package includes:
>
> > i) the name, address, and telephone number of a contact point at the Commission for consumer complaints; and
> >
> > ii) any disclosures that the Commission requires be made during an oral solicitation;
> >
> > iii) a statement that the information has been sent in response to a telemarketing call placed to the customer within the previous week;
> >
> > iv) a statement that a responsible decision-maker receiving the telephone call agreed to switch the customer's long distance (Dial-1) service to [name of soliciting IXC];
> >
> > v) direction to the customer to return either (a) a signed authorization card or (b) a form directing the IXC not to submit a long distance service change order to the LEC on behalf of the customer; and
> >
> > vi) a statement that if the customer does not respond within 14 days of the telemarketing call from the IXC, the customer's long distance service will be switched to the soliciting IXC.

Rep. Wise also suggested that:

> a) to ensure customer privacy, the return postcard not include the customer's telephone number; and
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> b) to increase the likelihood that the customer will have time to evaluate and respond to the information package, the soliciting IXC be required to wait

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[66] NARUC Comments at 5-6.
[67] GCI Comments at 3. *See also* CompTel Comments at 3-4; IRA Reply at 4; Convergent Comments at 5; Convergent Comments at 5.
[68] Ameritech Reply Comments at 5. *See also* Allnet Comments at 9; PRTC Comments at 2; SWBT Comments at 3 and Reply at 2-3; Metromedia Reply at 12-13; NECA Comments at 4-5.
[69] Sprint Reply at 5.
[70] NECA Comments at 4-5. *See also* MCI Reply at 2.
[71] AT&T Reply at 5.
[72] SWBT Comments at 3. *See also* MPSCS Comments at 3.
[73] ACTA Comments at 7.
[74] Sprint Comments at 11 n. 5.
[75] Sprint Reply at 5. *See also* Allnet Comments at 9; Convergent Comments at 7-8.
[76] MPSCS Comments at 5.
[77] Convergent Comments at 7-8. *See also* GCI Reply at 2; ACTA Comments at 7.
[78] IRA Reply at 4. *See also* Sprint Comments at 11-12; MCI Reply at 2; NYNEX Comments at 1-2.
[79] GTE Hawaiian Comments at 4-5.
[80] Letter from Representative Bob Wise, Chairman, Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations, to Alfred C. Sikes, Chairman, Federal Communications Commission, dated Dec. 24, 1991.

3 weeks after placing the soliciting call before submitting the order to change the customer's long distance carrier.

F. Cost of Implementing the AT&T-MCI Proposal; Burdens on IXCs

37. The record in this proceeding furnishes little detail about the costs of the proposed verification procedures. Metromedia would have the Commission require AT&T and MCI to reveal their full costs before deciding to impose the settlement terms on carriers not a party to the AT&T-MCI dispute. Metromedia notes, however, that although a review of AT&T and MCI's costs may be informative, AT&T and MCI's abilities to sustain the expenses of their settlement arrangement are likely to be greater than those of their competitors.[81] GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated)(GTE Hawaiian) contends the implementation costs of the AT&T-MCI proposal will have a disproportionately negative impact on carriers such as GTE which were not on the equal access ballot and, consequently, have a relatively small customer base.[82] Conversely, NTCA maintains that IXCs conducting telemarketing efforts to attract new customers most often initiate non-subscriber-initiated PIC changes, and that these IXCs should be capable, without undue burden, of establishing one of the three methods for verification.[83] NARUC asserts the record does not support that the additional costs imposed by the AT&T-MCI proposal justify the incremental levels of protection. NARUC argues that its proposal, in conjunction with a *significant* penalty for *each* proven incidence of unauthorized switching of IXC service, would be adequate to achieve an appropriate level of protection.[84]

38. Allnet suggests there should be only one procedure for presubscribing customers -- written authorizations with followup verifications -- to assure that all IXCs are equally burdened by the costs of these safeguards.[85] MPSCS maintains that a signed LOA or follow-up confirmation with a return postcard (as presented in the NARUC proposal) are the fastest, most effective, and least costly means of changing customers' PICs. MPSCS suggests that an IXC that cannot afford postage on such mailings is not viable enough to conduct business.[86]

G. Effect on Small Carriers

39. Metromedia fears the AT&T-MCI proposal would have a chilling effect on the marketing efforts of smaller IXCs who rely on telemarketing to compete with large IXCs.[87] Convergent suggests that because the AT&T-MCI proposal itself defines the independent third party verifier as capable of performing "large scale" verification processes, such verification should only be required for "large IXCs" such as AT&T and MCI, and, perhaps, Sprint.[88] In addition, CompTel proposes that the Commission define third-tier carriers as those with less than $1 billion in annual gross revenues in telecommunications services, which would qualify all IXCs except the largest three as third-tier carriers. CompTel argues that the confirmation procedures in the AT&T-MCI proposal should be modified to allow the NARUC proposal as a fourth confirmation option for third-tier carriers and to exempt such carriers from the confirmation auditing procedures.[89]

40. MPSCS, however, believes there should be one industry standard that applies equally to all companies to ensure that all customers will receive fair and equal treatment.[90] Sprint also argues that the Commission should adopt standards that apply to all carriers regardless of size, although Sprint cautions that the Commission should take into account the implementation costs such standards would impose on carriers of different sizes.[91] Finally, AT&T contends that the AT&T-MCI proposal would allow each IXC to select or combine those options that minimize costs given that carrier's particular marketing program. AT&T argues that obtaining LOAs from customers before submitting PIC change orders to LECs should be especially inexpensive for smaller carriers, who are already required to have procedures in place to encourage customers to return such cards.[92]

41. MPSCS notes that the relatively low cost of postage needed for a written LOA or confirmation package should in no way hinder competition.[93] Sprint argues that, by modifying the AT&T-MCI proposal to include in-house verification by noncommissioned personnel and auditing frequency based on the volume of outbound telemarketing calls, the AT&T-MCI proposal should not be unduly burdensome for any carrier, regardless of size.[94] Alternately, Metromedia suggests that the current PIC changes rules apply to IXCs that do not exceed an acceptable level of unauthorized switches, but that repeat offenders should be required to institute more stringent procedures for ensuring that PIC changes are authorized.[95] Finally, GTE Hawaiian argues that because the *PIC Change NPRM* does not address secondary international PIC carriers, and because there has been no record of abuses by such carriers, the proposed policies and rules should not apply when the carrier is not the

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81 Metromedia Reply at 9 n.7. *See also* NARUC Comments at 7.
82 GTE Hawaiian Comments at 5-7.
83 NTCA Comments at 2.
84 NARUC Comments at 6.
85 Allnet Comments at 10.
86 MPSCS Comments at 7. *See also* AT&T Reply at 4 n. *.
87 Metromedia Reply at 13-15. *See also* CompTel Comments at 4-6.
88 Convergent Comments at 5-6.
89 CompTel Comments at 6-7.
90 MPSCS Comments at 7. *See also* NECA Comments at 7.
91 Sprint Comments at 3. *See also* SWBT Comments at 2-3.
92 AT&T Comments at 5 and Reply at 3-6. *See also* Ameritech Reply at 4.
93 MPSCS Comments at 8.
94 Sprint Comments at 4-6.
95 Metromedia Reply at 17-18.

primary IXC selection of the end user.[96] Allnet objects that such carriers can switch customers' IXCs without authorization just as easily as any other carrier.[97]

V. DISCUSSION

42. In considering the advisability of imposing requirements on carriers of all sizes, we seek to benefit consumers without unreasonably burdening competition in the interexchange market. We therefore require all IXCs who submit PIC change orders to LECs on behalf of customers to institute one of the three confirmation procedures suggested by AT&T and MCI, as presented in Appendix A, Section C, of the *PIC Change NPRM* or, as a fourth alternative, the proposal suggested by NARUC and others, outlined in Appendix B.[98] We do not believe that expansion of the verification procedures to in-person and mail solicitation, as suggested by Rep. Wise,[99] is indicated at this time. The NPRM addressed problems that arose from telemarketing sales of long distance service. Furthermore, consumers solicited by mail or in person have not been the focus of public complaints about IXCs' telephone sales practices. In-person solicitation does not lend itself to the misunderstandings that are possible in telemarketing sales, and mail solicitation not only provides information to consumers but requires the consumer to return signed authorization to the soliciting IXC to effect a change in long distance service.

43. We also agree with AT&T that third party verification is preferable to in-house verification. We note that MCI, prior to its settlement agreement with AT&T, used a system of in-house verification that was apparently not without flaws. However, we have balanced the costs of third party verification against the benefits to consumers of a verification procedure which creates evidence totally independent of the IXC's marketing operations, and have concluded that third party verification, rather than in-house verification, should remain as one of the options. The commenting parties have not presented sufficient evidence to enable us to judge the efficacy of on-line verification supplemented by recording. However, in response to Sprint's concern about the costs of third party verification, we note that the fourth option, ie., an information package and a 14-day waiting period, is even less expensive than in-house verification.

44. We conclude that the record in this proceeding demonstrates that IXCs of all sizes should take the necessary steps to verify their telemarketing sales.[100] We have considered the arguments raised by the parties regarding the burden of implementing improved verification procedures and have weighed those costs against the need to protect consumers against unwanted changes in their long distance service. The record indicates that each of the three procedures proposed by AT&T and MCI presents certain disadvantages: carriers have had little success in having customers return the LOA, and it tends to discourage competition; there is little additional support for electronic verification via an 800 number, and the cost of such a program is unknown; the cost of third party verification is unclear, may lay undue burdens on small carriers, and its efficacy in reducing unauthorized switches remains to be proven. Moreover, both third party verification and electronic verification may take many months to implement.

45. Despite these potential limitations, we believe that these verification options will significantly benefit customers without imposing undue costs on carriers. We have not, however, adopted Rep. Wise's suggestion that there should be a 24-hour waiting period between the sale and the verification of the order.[101] Such a delay would appear to diminish the reliability of verification by making it less likely that the verifier contacted the party who had spoken with the telemarketer. Given our special concern about potential costs imposed on smaller IXCs in particular, we also conclude that the NARUC proposal is a reasonable alternative for other IXCs should they decide not to follow one of the procedures agreed to by AT&T and MCI. The NARUC procedures would place no undue burdens on small carriers inasmuch as they are now required to take steps to obtain an LOA. Moreover, in contrast to the AT&T-MCI verification proposals, the NARUC procedures can be implemented quickly by all carriers.

46. We conclude that IXCs who choose to follow the NARUC procedures should be required to mail the information package to the customer within 3 business days of the customer's request for a change in long distance carrier. Requiring IXCs to mail the package within 2 days, as suggested by Rep. Wise,[102] would appear to provide carriers insufficient time to process customer information and send the package. Such a requirement would be particularly burdensome for smaller carriers. We agree with Rep. Wise that the information package and letter should be sent by first class mail and should be clearly marked to indicate that they concern changing the customer's long distance carrier.[103]

47. While we do not adopt Rep. Wise's suggestion[104] that IXCs following the NARUC verification procedures be required to wait 21 days before placing the customer's change order with the LEC, we believe the procedures set forth in Appendix B meet his concerns that consumers be afforded sufficient time to consider the material mailed to them. The majority of commenters were concerned that a 14-day waiting period is anticompetitive. Moreover, because the NARUC procedures allow carriers at least 3 business days to send the information package to the customer and carriers must wait 14 days after sending the information package before submitting the customer's PIC change order to the LEC, at least 17 days would elapse between the solicitation call from the carrier and submission of the customer's order with the LEC. We believe that the 14-day waiting period protects customers against unauthorized switching while, at the same time, providing an alternative confirmation procedure that may be more

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[96] GTE Hawaiian Comments at 3-4.

[97] Allnet Reply at 3 n. 6.

[98] A description of the four confirmation procedures is attached at Appendix B of this Order.

[99] *See* Rep. Wise comments at 2.

[100] We have also concluded that secondary international PIC carriers such as GTE Hawaiian should take the same steps to verify their telemarketing sales. Such steps are not unduly burdensome, and GTE Hawaiian has indicated that it has no objection to implementing the NARUC procedures.

[101] *See* Rep. Wise Comments at 2.

[102] *See* Para. 39, *supra*.

[103] *See* Para. 39, *supra*.

[104] *See* Para. 39, *supra*.

affordable for smaller carriers than the AT&T-MCI proposed procedures. The 14-day waiting period is designed to allow time for the customer to receive the information package, to review it with members of the household, and to mail back the postcard confirming or denying the order.[105] In addition, neither consumers nor carriers are disadvantaged by the 14-day wait. Customers who wish to place calls with their new carrier before the required 14-day waiting period has ended may do so by contacting the LEC directly or by using one of the other confirmation methods the IXC may make available. In addition, the customer may in the interim reach its new carrier by dialing the IXC's 10XXX access code. Use of the IXC's access code offers convenience to customers during the waiting period and would protect small carriers from loss of revenues during the waiting period.

48. Adoption of the revised verification procedures is consistent with the Commission's previous decisions in the *Waiver Order*, in which we allowed IXCs to place PIC orders if they had instituted steps to obtain LOAs, and the *Illinois CUB Order*, in which we concluded that the rules were intended to facilitate the IXCs' marketing efforts while maintaining the protection embodied in the requirement for LOAs.[106] We agree with Sprint and Bell Atlantic that the current rules regarding IXC responsibility for charges associated with disputed changes for which the IXC cannot produce an LOA should remain unchanged. We anticipate that the revised verification procedures will sharply reduce disputes about orders for the IXCs' service and that the charges imposed by LEC tariffs, therefore, will not impose too heavy a burden on the IXCs.

49. Although we sought comment in the *PIC Change NPRM* on whether the procedures set forth in the AT&T-MCI proposal, or alternative procedures, should apply to customer-owned payphones, few parties addressed this issue. Although there has been some suggestion that we require different verification procedures for customer-owned payphones, the record before us does not support such disparate treatment. Therefore, we will, at this time, require IXCs to institute one of the four verification procedures for customer-owned payphone service. Similarly, since the record "does not support disparate treatment for business and residential service, we will require IXCs to institute an allowed verification procedure for both business and residence service solicitations.

50. We will not interfere with the agreements reached by AT&T and MCI to resolve their civil suits. We do not, however, adopt certain procedures which AT&T and MCI jointly agreed would apply to each other, namely the monthly auditing requirements or the Quality Assurance Program, for other carriers. *See* Appendix A of the *PIC Change NPRM*. Both of these programs would appear to require extensive involvement by this Commission in the business operations of these other IXCs, and we are reluctant, at this time, to take this action without a record suggesting such steps are necessary to protect consumers. Furthermore, there is little support among commenting parties for mandatory monthly audits or the Quality Assurance Program. Concerns were raised about costs to smaller carriers and about the efficacy of "self-attestation" reporting. We do, however, suggest that IXCs may benefit from instituting such programs on their own behalf.

VI. CONCLUSION

51. In this *Report and Order*, we have found that a modification of the carrier selection procedures is necessary to protect the interests of consumers. We have also found that the verification procedures proposed by AT&T and MCI in their settlement agreement, as well the alternative procedures for other carriers suggested by NARUC, will be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its petition for rulemaking. We have also found that the auditing program and Quality Assurance Program agreed to by AT&T and MCI should not now be imposed on other carriers. In light of these conclusions, we modify our long distance carrier selection procedures to reflect the three confirmation procedures suggested by AT&T and MCI, as presented in Appendix A, Section C, of the *PIC Change NPRM*, and the confirmation procedure suggested by NARUC, as presented in Paragraph 23 of the *PIC Change NPRM*.[107]

VII. REGULATORY FLEXIBILITY ACT

52. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need and purpose of this action:

The Commission is adopting this *Report and Order* to protect consumers against unauthorized switching of their long distance company. The Order requires carriers who generate customer orders by telemarketing to verify the customer's authorization by one of four procedures before placing the order with the LEC on the customer's behalf.

B. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility analysis:

We asserted in the *PIC Change NPRM* that the proposed rules impose no reporting requirements and no new recordkeeping requirements. Nevertheless, Allnet argues that the proposed rules require additional recordkeeping (records must be kept for 12 months) and

[105] We adopt Rep. Wise's suggestion that the name, address, and telephone number of a contact point at the Commission for consumer complaints be included in the information package. However, we do not adopt his suggestion that the customer's telephone number not be included on the return postcard because the customer's telephone number is necessary identification for the IXC to accurately place or cancel the solicited PIC change order. As to his suggestion that the information package also include any disclosures that the Commission requires be made during the oral solicitation, the Commission has not prescribed language to be used by IXCs in telemarketing sales.

[106] As Ameritech commented, consumers are unfamiliar with terms such as "Letter of Agency" and may not understand the nature of the document they are signing. Therefore, we recommend that carriers title their LOA forms in clear and simple language, such as "Permission to Change Long Distance Carrier" or "Long Distance Carrier Selection." *See* Ameritech Comments at 6-8.

[107] A description of the four confirmation procedures is attached as Appendix B of this Order.

reporting (certification to LECs of compliance, attestation audits, etc.) requirements that do not exist under the current rules.[108] We reply that IXCs are currently required to institute steps to obtain and retain LOAs for 12 months. Moreover, this Order does not require other IXCs to adopt the compliance certification, auditing requirements, or Quality Assurance Program suggested in the AT&T-MCI proposal.

III. Significant alternatives considered and rejected:

Sprint proposes allowing IXCs to verify PIC change orders by in-house verification. We conclude that independent third party verification, which provides a system which creates evidence totally independent of the IXC's marketing operations, is preferable to in-house verification. Because this Order adopts the NARUC proposal, which is even less expensive than inhouse verification, as a fourth option, the Order should not have a significant economic impact on a substantial number of small business entities.

VIII. PAPERWORK REDUCTION ACT STATEMENT

53. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase burden hours imposed on the public.

IX. ORDERING CLAUSES

54. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 4(i) and 201-204 of the Communications Act, 47 U.S.C. §§ 4(i) and 201-204, all interexchange carriers shall put into effect the modifications described herein.

55. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements set forth herein.

56. IT IS FURTHER ORDERED that the petition for rulemaking filed by American Telephone and Telegraph Company, IS GRANTED TO THE EXTENT DESCRIBED HEREIN, and otherwise IS DENIED.

57. IT IS FURTHER ORDERED that the provisions in this *Report and Order* will be effective sixty (60) days after *Federal Register* publication.

58. IT IS FURTHER ORDERED that, effective 60 days after publication in the Federal Register, the Commission's Rules are amended to add Subpart K, consisting of Section 64.1100, to Part 64, 47 C.F.R. Part 64, as shown in Appendix B hereto.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[108] Allnet Comments at 10.

APPENDIX A

COMMENTS:

1. Allnet Communication Services, Inc. (Allnet)
2. American Telephone and Telegraph Company (AT&T)
3. America's Carriers Telecommunications Association (ACTA)
4. Ameritech Operating Companies (Ameritech)
5. Bell Atlantic (Bell Atlantic)
6. Communique Telecommunications, Inc. (CTI)
7. Competitive Telecommunications Association (CompTel)
8. Convergent Communications, Inc. (Convergent)
9. Eastern Telephone Systems, Inc. d/b/a Eastern Tel Long Distance Service, Inc. (Eastern)
10. General Communication, Inc. (GCI)
11. GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated)(GTE Hawaiian)
12. Interexchange Resellers Association (IRA)
13. MCI Telecommunications Corporation (MCI)
14. Michigan Public Service Commission Staff (MPSCS)
15. National Association of Regulatory Utility Commissioners (NARUC)
16. National Exchange Carrier Association (NECA)
17. National Telephone Cooperative Association (NTCA)
18. New York State Department of Public Service (NYSDPS)
19. New York Telephone Company and New England Telephone and Telegraph Company (collectively the NTCs) (NYNEX)
20. Public Utilities Commission of Ohio (PUCO)
21. Puerto Rico Telephone Company (PRTC)
22. Southwestern Bell Telephone Company (SWB)
23. Telecommunications Marketing Association (TMA)
24. United States Telephone Association (USTA)
25. US Sprint (Sprint)
26. Wise, Representative Bob, West Virginia (Rep. Wise)

REPLY COMMENTS:

1. Allnet
2. AT&T
3. Ameritech
4. Bell Atlantic
5. BellSouth
6. Cincinnati Bell Telephone Company (CBT)
7. GCI
8. IRA
9. Metromedia Communications Corporation (Metromedia)
10. MCI
11. SWB
12. TMA
13. USTA
14. Sprint

APPENDIX B

Amendment to the Commission's Rules

47 C.F.R. Part 64, is amended to read as follows:

1. The authority citation for Part 64 is amended to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201-4, 218, 48 Stat. 1070-71, as amended, 1077; 47 U.S.C. 201-4, 218, unless otherwise noted.

2. Part 64 is amended by adding Subpart K, to read as follows:

Subpart K -- Changing Long Distance Service

§64.1100 Verification of orders for long distance service generated by telemarketing.

No IXC shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

a) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:

1) the customer's billing name and address and each telephone number to be covered by the PIC change order,

2) the decision to change the PIC to the IXC, and

3) the customer's understanding of the PIC change fee; or

b) the IXC has obtained the customer's electronic authorization, placed from the telephone numbers(s) on which the PIC is to be changed, to submit the order that confirms the information described in subsection (1) above to confirm the authorization. IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

c) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

d) within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

1) the information is being sent to confirm a telemarketing order placed by the customer within the previous week,

2) the name of the customer's current IXC,

3) the name of the newly requested IXC,

4) a description of any terms, conditions, or charges that will be incurred,

5) the name of the person ordering the change,

6) the name, address, and telephone number of both the customer and the soliciting IXC,

7) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order,

8) a clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier], and

9) the name, address, and telephone number of a contact point at the Commission for consumer complaints.

10) IXCs must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have cancelled their orders during the waiting period, IXCs, of course, cannot submit the customers' orders to the LECs.

SEPARATE STATEMENT OF COMMISSIONER ANDREW C. BARRETT

Re: Policies and Rules Concerning Changing Long Distance Carriers (CC Docket No. 91-64)

I am pleased to support this Order which provides stronger verification procedures designed to protect customers from unscrupulous telemarketing practices. I am

convinced that modifications to our current carrier selection procedures is necessary to protect the interest of consumers. I am hopeful that the verification procedures outlined by AT&T, MCI, and NARUC will be a more effective way of providing these needed safeguards. I am particularly satisfied that the NARUC proposal has been included as an alternative verification method. This method has the added advantage of providing smaller carriers with an alternative that is simpler and less costly to implement.

This item is a good example of where private parties reach a solution to their problems and bring that solution to the Commission. Such cooperative actions should become a model for other disputes among parties. I believe this Order did a good job in balancing legitimate customer concerns against the objective of allowing greater and easier customer choices of long distance providers. I believe that these revisions to our current procedures will provide additional protection to consumers beyond existing safeguards without unreasonably hurdening competition in the interexchange market. I plan to closely monitor this area to assure myself that the verification procedures implemented today adequately protect customer interests on a going forward basis.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised
Percentages of Depreciation
pursuant to the Communications
Act of 1934, as amended for:

AT&T Communications — AAD 91-50
Cincinnati Bell
Telephone Company
Citizens Utilities
Company of California
Contel of California
Contel of New York, Inc.
GTE North Incorporated
GTE Northwest Incorporated
GTE South Incorporated
Illinois Bell
Telephone Company
Nevada Bell
New Jersey Bell
Telephone Company
Pacific Bell
The Bell Telephone
Company of Pennsylvania
The Chesapeake and
Potomac Telephone
Company of West Virginia
The Diamond State
Telephone Company
US West Communications

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 1992; Released: January 31, 1992

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we prescribe depreciation rates and amortizations for fifteen Local Exchange Carriers (LECs) and one interexchange carrier (AT&T) that filed requests for such changes in 1991. We determined these depreciation rates and amortizations after considering the studies underlying the carriers' requests, staff analysis and recommendations, and the comments of the interested parties.

II. BACKGROUND

2. This Commission is required by the Communications Act of 1934[1] to prescribe the depreciation rates that are used to compute depreciation expense for communications common carriers. Depreciation is an important factor in the determination of a carrier's net investment and the level of earnings that it reports for financial and regulatory purposes. In recent years, depreciation expense has become the largest operating expense, amounting to 22% of total operating expenses of the LECs and AT&T in 1990. Since depreciation rates are based upon estimates,[2] these rates require periodic review to ensure their reasonableness.

3. It is our practice to review and as necessary revise carriers' depreciation rates and amortizations once every three years. We review depreciation rates for approximately one-third of the larger carriers each year. Our review procedures are as follows: (a) carriers submit depreciation studies, which consist of a variety of data related to the carriers' recent plant retirements and plans for future plant retirements; (b) the Bureau independently analyzes carriers' proposals and depreciation data and prepares its own preliminary proposals, which are forwarded to the state commissions[3] and the carriers; (c) representatives from the Bureau, the state commissions and the carriers then meet to discuss the various proposals (i.e., the three-way meetings), and at the conclusion of these meetings, the Bureau makes its recommendations; (d) the carriers then formally file for revised depreciation rates that may or may not agree with the Bureau's proposals; (e) the Bureau issues a Public Notice requesting comments on the proposed depreciation rate changes; and (f) after reviewing the complete record, the Commission prescribes revised depreciation rates.

4. This year, in accordance with our triennial schedule, thirteen of the sixteen carriers listed in the caption submitted full studies proposing revised depreciation rates and amortizations based upon revised estimates of the primary depreciation factors (*i.e.*, equipment service life, net salvage and mortality dispersion patterns). Two carriers submitted studies using our streamlined procedures[4]

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[1] *See generally* 47 U.S. C § 220(b)(1982). In recent years, we have also prescribed amortization amounts in lieu of depreciation rates to resolve certain depreciation accounting problems. *See* Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers, *Report and Order*, 3 FCC Rcd (1988)(herein after, the *Amortization Order)*. An amortization amount is a specific amount to be charged to depreciation expense each year.

[2] Pursuant to our rules, the depreciation rate for an account is a function of life and salvage estimates and the book reserve ratio. *See* 47 C.F.R. Section 32.2000(g)(2)(ii).

[3] This coordination is conducted pursuant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(i).

[4] *See* The Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934, as amended for: AT&T-Long Lines Department, 96 FCC 2d 257 (1983) (*1983 Depreciation Order)*. In that Order, we established streamlined study procedures whereby carriers could file for the annual update of rates as necessary between triennial reviews using the same equipment life and salvage estimates that underlie prescribed rates. Bell of Pennsylvania, C&P of West Virginia and GTE South-Virginia filed using these procedures.

and one carrier[5] submitted a full study and a streamlined study. Following the procedures outlined above, the Bureau proposed rates and amortizations in a *Public Notice* released August 16, 1991.[6] The Bureau transmitted to each carrier and respective state commission a copy of the *Public Notice* and a list of depreciation factors used to calculate its recommended depreciation rates and amortizations. GTE Service Corporation filed comments. Cincinnati Bell, Pacific Telesis, Southern New England Telephone and Southwestern Bell filed reply comments.

III. DISCUSSION

A. The Depreciation Rate Proposals

5. The rates and amortizations that the Bureau proposed in the *Public Notice* are the same rates and amortizations that the carriers requested in their formal filings. For some of the accounts, the carriers' preliminary proposals had been different. However, after discussions at the three-way meetings, carriers revised those proposals in their filings. No party filed an objection to these rates and amortizations.[7] We conclude, based upon the record in this proceeding, that the carriers' proposed depreciation rates and amortizations are consistent with the Commission's depreciation policies and are adequately supported by the carriers' underlying studies. Accordingly, we prescribe those rates and amounts. We discuss below other issues raised by the carriers' studies.

B. Amortization for Dying Accounts

6. Our current procedures[8] produce a number of technical problems when applied to accounts that are rapidly being phased out (i.e., "dying accounts"). For example, if the final date of retirement is mis-forecast by as little as a few months, unless substantial revisions are made to the depreciation rates, reserve imbalances can result. The most practical way of resolving this problem is to apply an amortization procedure which adjusts the depreciation expense each month to reflect the current plant and reserve balances.[9] This allows the carriers to reduce the net plant to zero in relatively equal increments, without wide vacillation in the rates.

7. During the 1991 review, the Bureau identified 27 "dying accounts" and concluded that the use of an amortization procedure to write off these accounts is consistent with this Commission's policy and practice. No commenting party opposed this proposal for these accounts. We conclude that special amortization procedures should be used for the accounts and amortization periods indicated below:

Carrier and Jurisdiction	Account	Period (Months)
AT&T Communications	Analog ESS	24
	Crossbar	12
	Operator Systems-TSPS	12
	Aerial Cable-Metallic	12
C&P of West Virginia	Analog ESS	36
Cincinnati Bell-Ohio	Operator Systems	24
GTE North-Illinois	Operator Systems	12
-Michigan	Analog ESS-ETS4	12
GTE South-Kentucky	Operator Systems	24
-North Carolina	Radio Systems	12
-West Virginia	Analog ESS	36
	Operator Systems	24
GTE West-Idaho	Operator Systems-TSPS	36
Nevada Bell	Analog ESS	60
Pacific Bell	Crossbar	36
	Step-by-Step	12
US West Communications-Arizona	Crossbar	48
	Operator Systems	12
-Colorado	Crossbar	30
	Step-by-Step	36
	Operator Systems	12
-Idaho	Crossbar	12
	Step-by-Step	12
-Montana	Operator Systems	12
-New Mexico	Crossbar	24
-Utah	Operator Systems	18
-Wyoming	Operator Systems	12

8. The special procedures for calculating the amortization for "dying accounts" are as follows:

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[5] GTE South submitted a full study for its Kentucky, North Carolina and West Virginia jurisdictions and a streamlined study for its Virginia jurisdiction.

[6] Comments Invited On Depreciation Rate Prescriptions Proposed For Domestic Telephone Carriers, 6 FCC Rcd 5015 (1991) (*Public Notice*).

[7] GTE's comments addressed the effective dates of depreciation prescriptions. GTE requested that the FCC not insist on an effective date of January 1 of the filing year, proposing an alternative that would permit carriers to choose their effective dates. Cincinnati Bell, Pacific Telesis, Southern New England Telephone and Southwestern Bell all supported GTE's comments regarding the effective date. We have already determined an effective date policy in another proceeding. *See* The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended, for Alascom, Inc. *et al.*, FCC 92-37 (adopted January 28, 1992) (*Effective Date Reconsideration Order*). Accordingly, we do not address either GTE's comments or the reply comments here.

[8] Currently, the Commission uses the remaining-life procedure. *See*, Amendment of Part 31 (Uniform Systems of Accounts for Class A and Class B Telephone Companies), 83 FCC 2d 267 (1980) (*Property Depreciation) reconsideration*, 87 FCC 2d 916 (1981). *Supplemental Opinion and Order*, 87 FCC 2d 1112 (1981).

[9] *See, e.g.*, The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended, for: American Telephone and Telegraph Company *et al.*, 96 FCC 2d 257 (1983).

a. Determine the net service value at the beginning of each month by subtracting the reserve balance and the future net salvage estimate from the plant balance.

b. Divide the net service value determined in Step (a) by the number of months remaining in the amortization period. For example if the amortization period is 36 months, the first month's amortization is 1/36 of the net service value at the beginning of the first month. The second month's amortization is 1/35 of the net service value at the beginning of the second month, and so on.

C. Effective Date

9. The carriers listed in the caption filed for various effective dates from January 1, 1991 to January 1, 1992. In the *Effective Date Reconsideration Order*[10] the Commission affirmed its previous determination that all depreciation prescriptions should become effective on January 1 of the study year. However, the Commission decided that rate-of-return carriers studied in the 1991 represcription should be allowed to apply the effective date requested in their formal filings. Two of the carriers studied in this 1991 represcription, Cincinnati Bell and Citizens Utilities of California, are rate-of-return carriers. Cincinnati Bell requested a July 1, 1991 effective date and Citizens Utilities of California requested a January 1, 1991 effective date. As shown in the Appendix, we are adopting a January 1, 1991 effective date for all carriers except Cincinnati Bell. For Cincinnati Bell, we are adopting a July 1, 1991 effective date.

D. Submission of Whole-Life Depreciation Parameters

10. In many of the depreciation prescription orders that the Commission has approved since its decision in *Property Depreciation*,[11] the Commission has expressed its concern with the size of the depreciation reserve imbalance. Because of the rapid rate of technological advancement in the industry, we continue to believe that the industry's reserve condition is extremely important. In order to adequately calculate the reserve condition, it is necessary to consider the whole-life rates.[12] As a result, when carriers in this Order file for changes in depreciation rates, we require them to provide whole-life rates that are consistent with the proposed rates until notified to the contrary.

IV. CONCLUSION

11. Having considered the carriers' proposals, and the studies upon which those proposals are based, the views and recommendations of the states, the responses to the Public Notice, and the Bureau's studies and analyses, we adopt the depreciation rates, amortization amounts, and effective dates listed in the Appendix.

V. ORDERING CLAUSES

12. ACCORDINGLY IT IS ORDERED, pursuant to Sections 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 201-205 and 220(b), that the percentages of depreciation and amortization amounts set forth in the Appendix to this Order ARE PRESCRIBED, effective on the dates listed.

13. IT IS FURTHER ORDERED, that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[10] *See* Note 7, *supra*.
[11] *See* Note 8, *supra*.
[12] Whole-life rates are calculated by dividing 100% less the average net salvage percentage by the average service life.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
AT&T COMMUNICATIONS

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.2	20	63.6	5.1	0
2114 TOOLS & OTH WORK EQUIP	5.2	2	25.1	14.0	-612
2121 BUILDINGS	23.0	0	28.0	3.1	-2017
2122 FURNITURE	13.0	4	-14.4	8.5	-5
2123 OFFICE EQUIPMENT	8.2	0	43.8	6.9	-79
2124 GEN'L PURPOSE COMPUTERS	4.0	7	44.8	12.1	81
2211 ELECTRONIC ANALOG	---	-5	-242.7	---	@
2212 ELECRONIC DIGITAL	8.6	1	29.4	8.1	10768
2215 CROSSBAR	---	-5	-180.8	---	*
2220 OPERATOR SYSTEMS-MANUAL	---	0	100.0	---	1771
2220 OPERATOR SYSTEMS-OSPS	6.1	1	7.8	15.0	0
2220 OPERATOR SYSTEMS-TSPS	---	0	---	---	*
2231 COE SATELLITE	4.5	0	60.0	8.9	0
2231 RADIO ANALOG	0.9	-4	76.1	31.0	17458
2231 RADIO DIGITAL	5.3	-4	42.9	11.5	0
2232 CIRCUIT ANALOG-DSR	9.5	-7	69.9	3.9	0
2232 CIRCUIT ANALOG-OTHER	0.8	-7	80.5	33.1	23993
2232 CIRCUIT DIGITAL-DSR	14.2	-3	9.5	6.6	0
2232 CIRCUIT DIGITAL-OTHER	4.4	-3	26.8	17.3	-2282
2351 PUBLIC TELEPHONE EQUIP	5.0	0	26.2	14.8	-300
2362 OTHER TERM EQUIPMENT	5.7	-2	19.2	14.5	-146
2411 POLES	11.8	-21	83.2	3.2	192
2421 AERIAL CABLE-METALLIC	---	-16	-48.7	---	*
2421 AERIAL CABLE-NON METAL	12.9	0	36.4	4.9	451
2422 UNDERGROUND CABLE-METAL	1.3	-6	48.4	44.3	3559
2422 UNDERGROUND CABLE-N MET	14.1	-4	21.1	5.9	0
2423 BURIED CABLE-METALLIC	2.6	-4	75.8	10.8	1462
2423 BURIED CABLE-NON METAL	16.0	-4	16.3	5.5	0
2424 SUBMARINE CABLE-METAL	10.1	-2	64.9	3.7	-7
2424 SUBMARINE CABLE-NON MET	18.0	-2	12.1	5.0	0
2431 AERIAL WIRE	6.6	-73	142.4	4.6	0
2441 CONDUIT SYSTEMS	43.0	-8	6.7	2.4	183

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 89-29, released February 1, 1989, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Electronic Analog Account is to be amortized over a twenty-four month period ending December 31, 1992.

* As described in paragraph 7 of the Order, the net service values for the Crossbar and Operator Systems-TSPS and Aerial Cable-Metallic accounts are to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE BELL TELEPHONE COMPANY OF PENNSYLVANIA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	3.0	16	56.0	9.3	-426
2113	AIRCRAFT	1.8	40	49.9	5.6	0
2115	GARAGE WORK EQUIP.	9.8	1	13.0	8.8	4
2116	OTHER WORK EQUIPMENT	9.7	1	29.1	7.2	38
2121	BUILDINGS	32.0	2	21.1	2.4	1342
2122	FURNITURE	11.4	3	26.9	6.1	460
2123	OFF/COMP COMM EQUIP	6.3	2	31.0	10.6	586
2124	COMPUTERS	3.7	5	42.2	14.3	1697
2211	ANALOG SWITCHING	7.9	5	36.3	7.4	16430
2212	DIGITAL SWITCHING	12.6	6	19.5	5.9	789
2220	OPERATOR SYSTEMS	8.3	3	31.7	7.9	80
2231	RADIO SYSTEMS	8.7	4	31.0	7.5	-84
2232	DDS CIR EQ	5.8	1	33.2	11.3	-114
2232	DIGITAL CR EQ	7.7	1	29.5	9.0	9276
2232	ANALOG CIR EQ	5.2	1	47.6	9.9	5157
2351	PUBLIC TELE EQUIP	6.2	2	47.5	8.1	258
2362	TERMINAL EQUIP.OTH	8.7	-2	38.0	7.4	-3442
2411	POLES	22.0	-75	44.7	5.9	1958
2421	AERIAL CABLE	15.0	-12	38.0	4.9	11476
2422	UNDERGROUND CABLE	18.3	-6	27.5	4.3	4133
2423	BURIED CABLE	16.2	-6	30.1	4.7	1859
2424	SUBMARINE CABLE	7.2	-10	93.2	2.3	-8
2426	INTRABUILDING CABLE	14.4	-32	39.3	6.4	1175
2441	CONDUIT SYSTEMS	44.0	-10	22.9	2.0	663

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.5	14	50.8	10.1	0
2115 GARAGE WORK EQ.	9.5	6	23.6	7.4	-3
2116 OTHER WORK EQ.	9.3	6	25.0	7.4	-28
2121 BUILDINGS	28.0	4	23.7	2.6	-208
2122 FURNITURE	9.1	3	27.1	7.7	41
2123 OFC. SUP. EQ.	5.5	5	27.8	12.2	26
2123 COMP COMM EQ	6.1	8	39.0	8.7	3
2124 COMPUTERS	3.8	5	43.9	13.4	0
2211 ANALOG SWITCH. @	---	10	40.1	---	2113
2212 DIGITAL SWITCH	12.0	5	16.7	6.5	50
2215 SXS SWITCH.	0.5	-3	99.7	6.6	0
2215 CROSSBAR	0.5	-2	102.0	0.0	0
2220 OPER SYS DIG	9.7	5	13.1	8.4	0
2220 OP SYS ANALOG	1.6	0	95.4	2.9	42
2231 RADIO SYSTEMS	6.7	3	43.1	8.0	-163
2232 DIGITAL SYS	6.5	1	17.9	12.5	-1
2232 DIGITAL CKT	6.7	1	38.5	9.0	2752
2232 ANALOG CKT	4.8	0	24.7	15.7	1247
2351 PUBLIC TEL	7.8	4	42.5	6.9	-6
2362 TEL & MISC	6.3	4	76.8	3.0	-127
2362 OTH TERM	9.2	11	9.8	8.6	0
2411 POLES	15.8	-40	41.2	6.3	305
2421 AERIAL CABLE	14.8	-21	42.6	5.3	7183
2422 UG CABLE	17.9	-17	33.3	4.7	1067
2423 BURIED CABLE	10.5	-7	50.9	5.3	5459
2424 SUBMARINE CABLE	6.6	0	57.5	6.4	-6
2426 INTRABLDG CABLE	9.4	-21	51.8	7.4	394
2441 CONDUIT SYSTEMS	37.0	-8	25.1	2.2	469

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Analog Switching Account is to be amortized over a thirty-six month period ending December 31, 1993.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CINCINNATI BELL TELEPHONE COMPANY - KENTUCKY

Effective July 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.8	10	34.2	14.7	-17
2115 GARAGE WORK EQUIP	9.0	2	0.5	10.8	-3
2116 OTHER WORK EQUIP	9.5	2	12.7	9.0	-9
2121 BUILDINGS	24.0	-5	24.9	3.3	25
2122 FURNITURE	9.3	7	15.4	8.3	2
2123 COMPANY COMM EQUIP	5.2	2	48.2	9.6	-37
2123 OFFICE SUPPORT EQUIP	6.3	7	19.8	11.6	1
2124 GEN'L PURPOSE COMPUTERS	5.2	5	22.9	13.9	0
2211 ELECTRONIC SW-ANALOG	6.1	2	36.3	10.1	11
2212 ELECTRONIC SW-DIGITAL	11.2	3	21.7	6.7	207
2231 RADIO SYSTEMS	6.6	-13	65.4	7.2	2
2232 COE CIRCUIT-ANALOG	5.0	-5	61.6	8.7	23
2232 COE CIRCUIT-DIGITAL	7.5	4	32.4	8.5	84
2351 PUBLIC TEL TERM EQUIP	5.2	1	76.3	4.4	53
2362 OTHER TERMINAL EQUIP	4.6	-4	74.7	6.4	0
2411 POLES	17.9	-51	34.5	6.5	-276
2421 AERIAL CABLE-METAL	14.9	-52	45.7	7.1	-23
2421 AERIAL CABLE-NON METAL	18.7	-10	2.6	5.7	0
2422 UG CABLE-METALLIC	17.8	-34	52.5	4.6	475
2422 UG CABLE-NON METAL	15.7	-10	5.8	6.6	0
2423 BURIED CABLE-METAL	20.0	-10	26.2	4.2	1
2423 BURIED CABLE-NON METAL	21.0	-5	1.4	4.9	0
2426 INTRABLDG CABLE-METAL	12.0	-56	48.5	9.0	65
2426 INTRABLDG CABLE-NON MET	11.1	-10	7.1	9.3	0
2431 AERIAL WIRE	11.6	-51	38.1	9.7	29
2441 CONDUIT SYSTEMS	40.0	-14	26.7	2.2	93

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CINCINNATI BELL TELEPHONE COMPANY - OHIO

Effective July 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	4.7	11	34.3	11.6	0
2115 GARAGE WORK EQUIP	9.2	2	14.4	9.1	-3
2116 OTHER WORK EQUIP	9.4	2	15.0	8.8	-32
2121 BUILDINGS	31.0	-1	27.7	2.4	343
2122 FURNITURE	10.0	7	26.9	6.6	-8
2123 COMPANY COMM EQUIPMENT	4.7	2	46.9	10.9	-401
2123 OFFICE SUPPORT EQPT	5.9	7	25.0	11.5	-2
2124 GEN'L PURPOSE COMPUTERS	4.0	5	48.0	11.8	0
2211 ELECTRONIC SW-ANALOG	5.6	2	41.6	10.1	1784
2212 ELECTRONIC SW-DIGITAL	11.1	3	19.4	7.0	345
2220 OTHER OPR SYSTEMS	---	0	47.2	---	@
2220 OPERATOR SYS-DIGITAL	10.9	3	2.5	8.7	109
2231 RADIO SYSTEMS	6.7	-13	36.2	11.5	-20
2232 COE CIRCUIT-ANALOG	5.0	-5	50.0	11.0	283
2232 COE CIRCUIT-DIGITAL	7.3	4	29.4	9.1	720
2351 PUBLIC TEL TERM EQUIP	5.4	1	60.4	7.1	172
2362 OTHER TERMINAL EQUIP	4.6	-4	37.3	14.5	0
2411 POLES	18.8	-71	29.7	7.5	-566
2421 AERIAL CABLE-METAL	16.3	-51	45.0	6.5	376
2421 AERIAL CABLE-NON METAL	19.5	-10	5.8	5.3	0
2422 UG CABLE-METALLIC	17.8	-41	42.7	5.5	1210
2422 UG CABLE-NON METAL	19.2	-10	11.8	5.1	11
2423 BURIED CABLE-METAL	21.0	-4	22.9	3.9	-84
2423 BURIED CABLE-NON MET	19.7	-5	14.6	4.6	0
2424 SUBMARINE CABLE	---	---	---	---	-1
2426 INTRABLDG CABLE-METAL	12.2	-25	55.8	5.7	402
2426 INTRABLDG CABLE-NON MET	12.5	-10	16.0	7.5	2
2431 AERIAL WIRE	11.8	-47	52.3	8.0	-24
2441 CONDUIT SYSTEMS	38.0	-15	32.4	2.2	451

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Operator Systems Account is to be amortized over a twenty-four month period ending June 30, 1993.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CITIZENS UTILITIES COMPANY OF CALIFORNIA

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	4.4	17	40.5	9.7	0
2114 SPECIAL PURPOSE VEH.	8.6	0	27.8	8.4	-2
2115 GARAGE WORK EQ.	6.6	0	40.1	9.1	0
2116 OTHER WORK EQ.	7.8	8	33.9	7.4	-19
2121 BUILDINGS	31.0	-2	15.2	2.8	-44
2122 FURNITURE	9.6	6	29.6	6.7	-26
2123 OFFICE SUPPORT EQ.	6.3	4	24.3	11.4	-9
2123 COMPANY COMM. EQ.	5.6	0	16.5	14.9	-13
2124 GENERAL PURP. COMP.	3.9	0	33.6	17.0	4
2212 DIGITAL SWITCHING	11.0	0	27.3	6.6	-270
2220 OPERATOR SYSTEM	4.8	0	17.4	17.2	-1
2231 OTHER RADIO FAC.	6.7	-1	28.8	10.8	-77
2232 CIRCUIT EQUIPMENT	5.9	2	26.9	12.1	-192
2351 PUBLIC TEL. TERM.	4.8	2	57.2	8.5	-3
2362 OTHER TERM. EQ.	3.1	0	43.3	18.3	-3
2411 POLES	18.3	-48	50.4	5.3	-58
2421 AERIAL CABLE	12.0	-12	40.3	6.0	196
2422 UNDERGROUND CABLE	18.4	-3	23.3	4.3	101
2423 BURIED CABLE	14.1	-5	29.8	5.3	80
2431 AERIAL WIRE	2.8	-38	122.2	5.6	132
2441 CONDUIT SYSTEMS	44.0	-5	12.7	2.1	-47

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CONTEL OF CALIFORNIA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.1	15	26.8	14.2	0
2113	AIRCRAFT	1.5	50	45.2	3.2	0
2116	OTHER WORK EQUIPMENT	11.5	9	17.4	6.4	-466
2121	BUILDINGS	17.2	-8	40.8	3.9	2
2122	FURNITURE & OFC EQ	9.1	3	31.1	7.2	116
21232	COMPANY COMM EQUIP	4.9	1	49.0	10.2	-19
2124	GEN PURP COMPUTERS	3.0	5	60.9	11.4	0
2212	DIGITAL SWITCHING	9.2	-1	20.8	8.7	988
2215	ELECTRO-MECH SWITCH	1.8	-1	96.4	2.6	0
2220	OPERATOR SYSTEMS	3.4	-2	79.5	6.6	0
2231	RADIO SYSTEMS	6.8	-3	43.0	8.8	334
2232	CIRCUIT EQUIPMENT	6.9	-2	28.2	10.7	-353
2351	PUBLIC TELEPHONE	4.8	2	62.3	7.4	80
2362	OTHER TEM EQUIP	4.9	5	46.9	9.8	57
2411	POLES	10.9	-21	44.7	7.0	500
2421	AERIAL CABLE	10.2	-21	53.8	6.6	888
2422	UNDERGROUND CABLE	16.8	-9	28.5	4.8	177
2423	BURIED CABLE	17.2	-7	26.7	4.7	-64
2424	SUBMARINE CABLE	6.2	-3	75.8	4.4	-1
2441	CONDUIT	38.0	-15	20.3	2.5	15

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CONTEL OF NEW YORK, INC.

Effective January 1, 1991

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
		A	B	C	D=(100%-B-C)/A	E
2114	VEHICLE- SPL PUR	8.8	10	51.6	4.4	0
2115	WORK EW GARAGE	8.8	10	77.4	1.4	0
2116	OTHER WORK EQUIPMENT	8.8	10	35.1	6.2	-208
2121	BUILDINGS	22.0	5	27.1	3.1	-40
2122	FURNITURE	12.7	15	35.0	3.9	-31
2123	OFFICE EQUIPMENT	4.8	0	67.2	6.8	-34
2124	GEN PURPOSE COMPUTERS	3.1	5	65.8	9.4	13
2212	DIGITAL SWITCHING	10.9	1	24.5	6.8	269
2215	SXS SWITCHING	2.5	2	74.5	9.4	0
2220	OPERATOR SYSTEM	7.4	0	66.8	4.5	0
2231	RADIO-MICROWAVE	10.7	0	38.7	5.7	-12
2231	RADIO-MOBIL	2.5	0	81.0	7.6	0
2232	CIRCUIT EQUIPMENT	5.1	2	29.9	13.4	265
2351	PUBLIC TELEPHONE	5.1	0	45.1	10.8	-46
2362	OTHER TERMINAL EQ	5.1	2	56.3	8.2	0
2411	POLE LINES	17.3	-32	33.1	5.7	125
2421	AERIAL CABLE	12.8	-12	31.9	6.3	572
2422	UNDERGROUND CABLE	14.9	-6	24.4	5.5	57
2423	BURIED CABLE	15.6	-2	23.9	5.0	259
2424	SUBMARINE CABLE	15.2	-2	27.9	4.9	-2
2431	AERIAL WIRE	1.8	-105	115.6	49.7	0
2441	CONDUIT SYSTEM	30.0	-3	21.0	2.7	-54

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 2

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE DIAMOND STATE TELEPHONE COMPANY

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.1	18	45.6	11.7	-22
2115 GARAGE WORK EQUIP	9.4	2	1.3	10.3	1
2116 OTHER WORK EQUIP	8.1	2	36.0	7.7	7
2121 BUILDINGS	29.0	3	25.8	2.5	107
2122 FURNITURE	8.6	2	21.5	8.9	0
2123 OFF/CO COMM EQUIP	4.7	0	-15.3	24.5	38
2124 COMPUTERS	4.0	8	35.1	14.2	6
2211 ANALOG SWITCHING	6.0	2	43.7	9.1	1269
2212 DIGITAL SWITCHING	11.0	5	23.9	6.5	49
2220 OPERATOR SYSTEMS	8.9	5	23.5	8.0	1
2231 RADIO SYSTEMS	5.9	0	-103.7	34.5	1
2232 CIRCUIT EQUIPMENT-DDS	6.2	0	39.1	9.8	-13
2232 CIRCUIT EQUIP-ANALOG	5.1	0	38.6	12.0	250
2232 CIRCUIT EQUIP-DIGITAL	7.0	2	30.8	9.6	391
2351 PUBLIC TELEPHONE EQUIP	5.4	1	55.4	8.1	16
2362 OTHER TERMINAL EQUIP	8.0	-3	33.4	8.7	-243
2411 POLES	22.0	-79	51.2	5.8	-43
2421 AERIAL CABLE	12.4	-19	45.6	5.9	640
2422 UNDERGROUND CABLE	17.5	-5	30.7	4.2	328
2423 BURIED CABLE	15.6	-7	29.9	4.9	346
2424 SUBMARINE CABLE	11.2	0	49.3	4.5	0
2426 INTRABLDG CABLE	11.5	-16	40.3	6.6	-5
2441 CONDUIT SYSTEMS	43.0	-14	22.1	2.1	-61

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - ILLINOIS

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.2	15	56.4	6.8
2113	AIRCRAFT	2.0	40	47.1	6.5
2115	GARAGE WORK EQ	8.1	0	58.8	5.1
2116	OTHER WORK EQ	8.3	0	56.0	5.3
2121	BUILDINGS	25.0	0	29.5	2.8
2122	FURNITURE	9.1	5	28.3	7.3
2123	OFFICE SUPPORT EQ	7.8	1	19.9	10.1
2123	COMPANY COMMUN EQ	6.7	1	66.1	4.9
2124	GEN PURP COMPUTERS	3.0	5	33.6	20.5
2211	ANALOG ELECTRONIC SW	7.3	3	64.9	4.4
2212	DIGITAL ELEC SW	11.1	3	25.9	6.4
2215	ELECTROMECH SW	7.6	-4	88.8	2.0
2220	OPERATOR SYSTEMS-TOPS	10.5	-2	27.6	7.1
2220	OPERATOR SYSTEMS-TSPS [a]	---	---	---	---
2231	RADIO SYSTEMS	4.0	0	79.6	5.1
2232	CIRCUIT EQUIPMENT	6.5	0	45.1	8.4
2351	PUBLIC TELE TERM EQ	---	10	90.0	5.0
2362	OTHER TERMINAL EQ	5.2	1	93.7	1.0
2411	POLES	14.0	-80	70.1	7.9
2421	AERIAL CBL-METALLIC	14.7	-72	49.7	8.3
2421	AERIAL CBL-NONMETAL	18.0	-30	21.3	6.0
2422	UNDRGRND CBL-METAL	17.0	-35	29.5	6.2
2422	UNDGRND CBL-NONMETAL	21.0	-25	10.5	5.5
2423	BURIED CBL-METALLIC	14.2	-10	39.7	5.0
2423	BURIED CBL-NONMETAL	21.0	-10	12.0	4.7
2424	SUBMARINE CABLE	11.8	0	61.3	3.3
2426	INTRBLDG NETWORK CBL	12.5	-40	99.8	3.2
2431	AERIAL WIRE	2.1	-86	181.3	2.2
2441	CONDUIT SYSTEMS	36.0	0	26.7	2.0

The figures in Columns B, C, and D are percentages of gross book cost.

[a] As described in paragraph 7 of the Order, the net service value for the Operator Systems - TSPS Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MICHIGAN

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	4.1	12	46.6	10.1	0
2115 GARAGE WORK EQ	5.9	0	47.7	8.9	1
2116 OTHER WORK EQ	6.5	5	50.7	6.8	-86
2121 BUILDINGS	27.0	-3	31.7	2.6	-68
2122 FURNITURE	9.8	5	57.1	3.9	71
2123 OFFICE SUPPORT EQ	4.7	1	59.9	8.3	0
2123 COMPANY COMMUN EQ	4.4	1	73.7	5.7	0
2124 GEN PURP COMPUTERS	2.5	5	54.1	16.4	0
2211 ANALOG ELECT SW	7.2	0	57.8	5.9	-407
2211 ANALOG ELEC SW-ETS4	---	---	---	---	@
2212 DIGITAL ELECT SW	11.5	0	24.4	6.6	-115
2215 ELECTROMECH SW	5.6	0	70.7	5.2	0
2220 OPERATOR SYSTEMS	13.7	-2	42.7	4.3	0
2231 RADIO SYSTEMS	4.9	-8	72.3	7.3	-18
2232 CIRCUIT EQUIPMENT	7.0	2	41.3	8.1	1125
2351 PUBLIC TELE TERM EQ	4.6	5	64.2	6.7	0
2362 OTHER TERMINAL EQ	4.8	1	80.7	3.8	0
2411 POLES	13.3	-63	65.3	7.3	498
2421 AERIAL CBL-METALLIC	17.8	-53	48.4	5.9	948
2421 AERIAL CBL-NONMETAL	22.0	-30	10.8	5.4	1
2422 UNDRGRND CBL-METAL	18.5	-15	30.4	4.6	44
2422 UNDGRND CBL-NONMETAL	24.0	-13	6.1	4.5	0
2423 BURIED CBL-METALLIC	14.5	-12	31.1	5.6	250
2423 BURIED CBL-NONMETAL	21.0	-12	10.8	4.8	44
2424 SUBMARINE CABLE	8.1	-2	61.3	5.0	16
2426 INTRBLDG NETWORK CBL	13.6	-12	37.8	5.5	0
2431 AERIAL WIRE	5.0	-50	83.7	13.3	0
2441 CONDUIT SYSTEMS	41.0	-8	26.5	2.0	56

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the ETS-4 Analog Electronic Switching Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MINNESOTA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	---	10	90.0	5.0
2116	OTHER WORK EQ	8.2	5	40.7	6.6
2121	BUILDINGS	20.0	-12	22.1	4.5
2123	COMPANY COMMUN EQ	4.1	0	11.2	21.7
2212	DIGITAL ELECT SW	17.0	3	4.6	5.4
2215	ELECTROMECH SW	5.3	0	53.9	8.7
2232	CIRCUIT EQUIPMENT	8.0	3	23.4	9.2
2351	PUBLIC TELE TERM EQ	---	20	80.0	5.0
2362	OTHER TERMINAL EQ	---	0	100.0	5.0
2411	POLES	7.9	-22	27.9	11.9
2421	AERIAL CBL-METALLIC	13.7	-24	45.3	5.7
2421	AERIAL CBL-NONMETAL	30.0	-12	0.0	3.7
2422	UNDRGRND CBL-METAL	27.0	-14	-3.4	4.3
2422	UNDGRND CBL-NONMETAL	30.0	-7	-1.4	3.6
2423	BURIED CBL-METALLIC	15.6	-6	37.9	4.4
2423	BURIED CBL-NONMETAL	29.0	-6	5.3	3.5
2441	CONDUIT SYSTEMS	37.0	-5	35.3	1.9

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MISSOURI

Effective January 1, 1991

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
		A	B	C	D=(100%-B-C)/A	E
2112	MOTOR VEHICLES	4.1	11	32.0	13.9	0
2115	GARAGE WORK EQ	11.9	0	28.8	6.0	0
2116	OTHER WORK EQ	9.9	10	33.9	5.7	19
2121	BUILDINGS	30.0	5	24.4	2.4	-99
2122	FURNITURE	7.6	10	59.1	4.1	5
2123	OFFICE SUPPORT EQ	5.1	0	23.3	15.0	0
2123	COMPANY COMMUN EQ	6.9	-2	80.2	3.2	0
2124	GEN PURP COMPUTERS	4.3	10	43.6	10.8	0
2211	ANALOG ELECT SW	---	---	---	---	704
2212	DIGITAL ELECT SW	11.0	5	26.5	6.2	-478
2215	ELECTROMECH SW	4.9	1	56.8	8.6	444
2231	RADIO SYSTEMS	5.3	-2	70.6	5.9	4
2232	CIRCUIT EQUIPMENT	5.7	5	25.1	12.3	389
2351	PUBLIC TELE TERM EQ	7.0	10	68.3	3.1	-71
2362	OTHER TERMINAL EQ	---	1	99.0	5.0	0
2411	POLES	11.6	-30	46.9	7.2	-13
2421	AERIAL CBL-METALLIC	9.7	-14	38.7	7.8	304
2421	AERIAL CBL-NONMETAL	21.0	-8	21.2	4.1	0
2422	UNDRGRND CBL-METAL	16.2	0	29.4	4.4	127
2422	UNDGRND CBL-NONMETAL	22.0	-6	15.6	4.1	0
2423	BURIED CBL-METALLIC	11.8	-4	35.0	5.8	333
2423	BURIED CBL-NONMETAL	21.0	-4	16.2	4.2	-6
2426	INTRBLDG NETWORK CBL	11.9	-14	40.8	6.2	0
2431	AERIAL WIRE	5.9	-50	138.8	1.9	0
2441	CONDUIT SYSTEMS	41.0	-4	26.0	1.9	-11

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-427, released January 25 1989, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTH INCORPORATED - KENTUCKY

Effective January 1, 1991

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
	(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112 MOTOR VEHICLES	3.5	19	65.9	4.3	0
2115 GARAGE WORK EQUIPMENT	8.3	0	66.2	4.1	2
2116 OTHER WORK EQUIPMENT	9.6	0	45.9	5.6	10
2121 BUILDINGS	25.0	8	27.1	2.6	272
2122 FURNITURE	8.3	19	41.1	4.8	37
2123 COMPANY COMM EQUIP	5.9	0	50.7	8.4	-313
2123 OFFICE SUPPORT EQUIP	6.8	7	49.3	6.4	3
2124 GEN'L PURPOSE COMPUTERS	3.5	5	62.2	9.4	0
2211 ANALOG ELEC SWITCHING	3.0	0	44.7	18.4	0
2212 DIGITAL ELEC SWITCHING	11.3	5	25.8	6.1	539
2215 EMECH SWITCHING	3.6	0	31.2	19.1	-182
2220 OPER SYS - DIGITAL	13.0	0	5.0	7.3	-200
2220 OPER SYS - MANUAL	---	---	---	---	@
2231 RADIO SYSTEMS	3.7	0	52.9	12.7	-107
2232 CIRCUIT EQUIPMENT	6.5	1	36.7	9.6	1063
2351 PUBLIC TELEPHONES	5.1	0	47.2	10.4	-96
2362 OTHER TERMINAL EQUIP	2.9	3	49.9	16.2	-217
2411 POLES	15.3	-21	28.4	6.1	-26
2421 AERIAL CABLE-METAL	13.4	-20	38.5	6.1	2209
2421 AERIAL CABLE-NONMETAL	18.3	0	8.7	5.0	11
2422 UG CABLE-METAL	18.5	0	32.9	3.6	117
2422 UG CABLE-NONMETAL	17.5	-7	4.7	5.8	6
2423 BURIED CABLE-METAL	9.4	0	26.6	7.8	201
2423 BURIED CABLE-NONMETAL	22.0	-6	9.8	4.4	0
2424 SUBMARINE CABLE	16.4	0	25.1	4.6	0
2426 INTRABLDG NETWORK CABLE	11.2	-20	46.1	6.6	12
2426 INTRABLDG NTWRK CA-NMET	18.7	-10	8.0	5.5	0
2431 AERIAL WIRE	3.6	-45	-64.2	58.1	0
2441 CONDUIT SYSTEMS	40.0	-1	27.3	1.8	18

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988 and as amended by Erratum DA 88-202 released February 19, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Operator Systems Manual Account is to be amortized over a twenty-four month period ending December 31, 1992.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTH INCORPORATED - NORTH CAROLINA

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.7	19	39.0	11.4	-61
2113 AIRCRAFT	7.1	35	37.2	3.9	4
2115 GARAGE WORK EQUIPMENT	8.2	0	68.3	3.9	1
2116 OTHER WORK EQUIPMENT	8.2	0	34.0	8.0	-29
2121 BUILDINGS	31.0	10	13.5	2.5	-38
2122 FURNITURE	8.8	13	38.6	5.5	-71
2123 COMPANY COMM EQUIP	5.4	-3	46.0	10.6	-347
2123 OFFICE SUPPORT EQUIP	6.8	2	31.9	9.7	27
2124 GEN'L PURPOSE COMPUTER	3.3	3	64.2	9.9	0
2212 DIGITAL ELEC SWITCHING	11.0	5	25.0	6.4	106
2220 OPERATOR SYSTEMS	7.8	0	8.2	11.8	-18
2231 RADIO SYSTEMS @	---	0	74.6	---	9
2232 CIRCUIT EQUIPMENT	6.2	2	34.3	10.3	556
2351 PUBLIC TELEPHONES	5.2	0	56.4	8.4	-37
2362 OTHER TERMINAL EQUIP	2.3	0	79.3	9.0	0
2411 POLES	14.8	-17	34.8	5.6	-37
2421 AERIAL CABLE-METALLIC	14.4	-2	26.4	5.3	-599
2421 AERIAL CABLE-NONMETAL	18.4	-5	7.4	5.3	-1
2422 UG CABLE-METAL	17.5	3	29.8	3.8	58
2422 UG CABLE-NON METAL	17.8	-12	10.4	5.7	6
2423 BURIED CABLE-METAL	10.2	0	25.4	7.3	170
2423 BURIED CABLE-NONMETAL	21.0	-5	14.8	4.3	-2
2426 INTRABLDG NETWORK CABLE	11.6	-7	20.8	7.4	-5
2431 AERIAL WIRE	6.1	-90	146.0	7.2	0
2441 CONDUIT SYSTEMS	46.0	-1	18.0	1.8	-46

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Radio Systems Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTH INCORPORATED - VIRGINIA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.8	7	40.1	11.0	0
2116	OTHER WORK EQUIPMENT	7.9	5	45.9	6.2	-2
2121	BUILDINGS	33.0	0	18.8	2.5	11
2122	FURNITURE	6.2	0	89.2	1.7	1
2123	OFFICE SUPPORT EQUIPMENT	11.3	0	26.2	6.5	0
2123	COMPANY COMMUNICATIONS EQUIP	6.1	-3	47.3	9.1	-4
2124	GENERAL PURPOSE COMPUTERS	14.3	0	17.5	5.8	0
2212	DIGITAL ELECTRONIC SWITCHING	12.5	5	8.9	6.9	-6
2215	ELECTROMECHANICAL SWITCHING	3.6	0	83.6	4.6	0
2231	RADIO SYSTEMS	6.6	-2	53.3	7.4	9
2232	CIRCUIT EQUIPMENT	8.9	10	27.6	7.0	71
2351	PUBLIC TELEPHONES	4.7	-3	79.8	4.9	-23
2362	OTHER TERMINAL EQUIPMENT (1)	---	0	76.0	9.3	0
2411	POLES	16.7	0	19.4	4.8	-66
2421	AERIAL CABLE-METALLIC	11.7	-10	45.3	5.5	81
2422	UNDERGROUND CABLE-METALLIC	15.7	-5	27.4	4.9	9
2423	BURIED CABLE-METALLIC	9.8	-2	40.6	6.3	21
2426	INTRABUILDING NETWORK CABLE	12.5	-10	42.8	5.4	0
2431	AERIAL WIRE	6.8	-40	100.3	5.8	44
2441	CONDUIT SYSTEMS	36.0	-1	27.6	2.0	1

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

(1) This rate is not based upon life, salvage and reserve factors.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTH INCORPORATED - WEST VIRGINIA

Effective January 1, 1991

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112 MOTOR VEHICLES	3.5	19	55.1	7.4	0
2115 GARAGE WORK EQUIPMENT	9.4	0	31.1	7.3	1
2116 OTHER WORK EQUIPMENT	9.7	0	38.0	6.4	-19
2121 BUILDINGS	39.0	5	15.3	2.0	-6
2122 FURNITURE	9.6	19	51.9	3.0	0
2123 COMPANY COMM EQUIP	6.3	-3	51.1	8.2	-57
2123 OFFICE	9.1	0	46.5	5.9	0
2124 GEN'L PURPOSE COMPUTERS	3.9	5	16.0	20.3	0
2211 ANALOG ELEC SWITCHING	---	0	7.7	---	@
2212 DIGITAL ELEC SWITCHING	11.5	6	12.4	7.1	59
2215 EMECH SWITCHING	4.1	0	86.5	3.3	0
2220 OPER SYS - DIGITAL	13.1	0	1.1	7.5	-57
2220 OPER SYS - MANUAL	---	---	---	---	*
2231 RADIO SYSTEMS	2.5	0	67.9	12.8	8
2232 CIRCUIT EQUIPMENT	7.7	5	21.4	9.6	123
2351 PUBLIC TELEPHONES	5.2	0	55.7	8.5	20
2362 OTHER TERMINAL EQUIP	2.9	0	67.1	11.3	0
2411 POLES	14.2	-11	17.3	6.6	-114
2421 AERIAL CABLE-METAL	14.9	-20	33.6	5.8	401
2421 AERIAL CABLE-NONMETAL	18.5	0	3.5	5.2	0
2422 UG CABLE-METAL	18.2	-24	29.5	5.2	31
2422 UG CABLE-NONMETAL	17.8	-10	9.9	5.6	0
2423 BURIED CABLE-METAL	13.5	0	25.6	5.5	80
2423 BURIED CABLE-NONMETAL	21.0	-5	24.8	3.8	0
2426 INTRABLDG NETWORK CABLE	12.3	-20	9.1	9.0	0
2426 INTRABLDG NTWRK CA-NMET	18.7	-10	2.9	5.7	0
2431 AERIAL WIRE	4.5	-42	106.7	7.8	50
2441 CONDUIT SYSTEMS	47.0	0	21.4	1.7	-13

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Analog Electronic Switching Account is to be amortized over a thirty-six month period ending December 31, 1993.

* As described in paragraph 7 of the Order, the net service value for the Operator Systems Manual Account is to be amortized over a twenty-four month period ending December 21, 1992.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - IDAHO

Effective January 1, 1991

Rate Category	Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.1	19	55.3	6.3	0
2115	GARAGE WORK EQ	11.0	5	57.0	3.5	3
2116	OTHER WORK EQ	8.2	13	37.0	6.1	-20
2121	BUILDINGS	23.0	-1	22.6	3.4	50
2122	FURNITURE	13.1	20	61.8	1.4	-4
2123	OFFICE SUPPORT EQ	8.7	15	44.4	4.7	-5
2123	COMPANY COMMUN. EQ	3.7	0	82.8	4.6	0
2124	GEN. PURP. COMPUTERS	3.4	10	44.5	13.4	0
2212	DIGITAL ELECT SW	8.5	3	30.2	7.9	298
2215	ELECTROMECH SW	3.8	0	68.3	8.3	1367
2220	OPERATOR SYSTEMS TSPS	---	---	---	---	@
2220	OPERATOR SYSTEMS	7.7	-2	0.0	13.2	0
2231	RADIO SYSTEMS	7.9	5	43.2	6.6	18
2232	CIRCUIT EQUIPMENT	7.3	7	37.8	7.6	325
2351	PUBLIC TELE TERM EQ	4.2	0	60.9	9.3	0
2362	OTHER TERMINAL EQ	4.8	0	74.3	5.4	0
2411	POLES & TOWERS	16.5	-99	62.0	8.3	221
2421	AERIAL CBL METAL	14.1	-22	43.7	5.6	73
2421	AERIAL CBL NONMETAL	17.9	-5	20.8	4.7	0
2422	UNDERGRD CABLE METAL	19.8	-12	30.2	4.1	42
2422	UNDER CABLE NONMETAL	18.0	-5	16.4	4.9	0
2423	BURIED CBL NONMETAL	13.6	-12	27.0	6.3	289
2423	BURIED CBL NONMETAL	18.4	-5	10.7	5.1	0
2424	SUBMARINE CABLE	12.2	0	55.1	3.7	18
2426	INTRABLDG CABLE	11.2	-30	45.9	7.5	0
2431	AERIAL WIRE	11.9	-75	100.4	6.3	34
2441	UNDERGROUND CONDUIT	38.0	-5	22.9	2.2	6

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Operator System-TSPS Account is to be amortized over a thirty-six month period ending December 31, 1993.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - OREGON

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.1	19	54.6	6.4	0
2115	GARAGE WORK EQ	11.0	5	47.2	4.3	1
2116	OTHER WORK EQ	8.2	13	36.1	6.2	-14
2121	BUILDINGS	31.0	0	18.0	2.6	77
2122	FURNITURE	13.1	20	-3.9	6.4	-48
2123	OFFICE SUPPORT EQ	8.7	15	27.8	6.6	-15
2123	COMPANY COMMUN. EQ	3.7	5	79.7	4.1	0
2124	GEN. PURP. COMPUTERS	3.4	10	40.5	14.6	0
2211	ANALOG ELECT SW	3.0	0	46.9	17.7	0
2212	DIGITAL ELECT SW	11.4	3	20.4	6.7	118
2215	ELECTROMECH SW	3.3	0	19.5	24.4	0
2220	OPERATOR SYSTEMS	7.7	-2	3.5	12.8	0
2231	RADIO SYSTEMS	8.9	5	32.2	7.1	-28
2232	CIRCUIT EQUIPMENT	7.3	2	35.8	8.5	589
2351	PUBLIC TELE TERM EQ	4.2	5	64.6	7.2	0
2362	OTHER TERMINAL EQ	3.4	0	80.6	5.7	0
2411	POLES & TOWERS	16.1	-103	63.7	8.7	343
2421	AERIAL CBL METAL	15.3	-35	48.6	5.6	1172
2421	AERIAL CBL NONMETAL	18.1	-5	17.8	4.8	0
2422	UNDERGRD CABLE METAL	19.6	-20	28.5	4.7	226
2422	UNDER CABLE NONMETAL	17.9	-5	19.3	4.8	0
2423	BURIED CABLE METAL	15.0	-10	27.7	5.5	159
2423	BURIED CBL NONMETAL	18.7	-5	2.2	5.5	0
2424	SUBMARINE CABLE	8.4	0	57.9	5.0	10
2426	INTRABLDG CBL	12.1	-30	57.5	6.0	0
2431	AERIAL WIRE	12.7	-80	90.7	7.0	93
2441	UNDERGROUND CONDUIT	41.0	-5	15.5	2.2	-47

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - WASHINGTON

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.6	19	51.2	6.5	0
2113	AIRCRAFT	3.5	70	20.2	2.8	0
2115	GARAGE WORK EQ	11.0	5	47.9	4.3	5
2116	OTHER WORK EQ	8.2	13	33.8	6.5	125
2121	BUILDINGS	31.0	0	10.6	2.9	492
2122	FURNITURE	13.1	20	-10.5	6.9	-191
2123	OFFICE SUPPORT EQ	8.7	15	31.0	6.2	-6
2123	COMPANY COMMUN. EQ	3.7	5	65.7	7.9	0
2124	GEN. PURP. COMPUTERS	4.0	10	57.5	8.1	0
2211	ANALOG ELECT SW	5.8	2	46.6	8.9	1434
2212	DIGITAL ELECT SW	11.1	3	19.3	7.0	65
2215	ELECTROMECH SW	2.0	0	81.0	9.5	0
2220	OPERATOR SYSTEMS	5.1	0	45.4	10.7	500
2231	RADIO SYSTEMS	7.5	5	41.6	7.1	81
2232	CIRCUIT EQUIPMENT	7.3	5	36.5	8.0	995
2351	PUBLIC TELE TERM EQ	4.2	10	57.2	7.8	0
2362	OTHER TERMINAL EQ	4.8	0	82.6	3.6	0
2411	POLE & TOWERS	16.7	-90	62.3	7.6	749
2421	AERIAL CBL METAL	12.1	-27	35.9	7.5	455
2421	AERIAL CBL NONMET	18.2	-5	13.5	5.0	0
2422	UNDERGRD CABLE METAL	16.6	-20	32.5	5.3	1031
2422	UNDER CABLE NONMETAL	17.9	-5	13.6	5.1	0
2423	BURIED CABLE METAL	14.3	-5	26.6	5.5	802
2423	BURIED CBL NONMETAL	18.1	-5	15.6	4.9	0
2424	SUBMARINE CABLE	8.4	0	63.5	4.3	-13
2426	INTRABLDG CBL METAL	12.1	-30	51.3	6.5	0
2431	AERIAL WIRE	14.0	-60	95.1	4.6	28
2441	UNDERGROUND CONDUIT	38.0	-5	17.7	2.3	87

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
ILLINOIS BEL TELEPHONE COMPANY

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	5.6	10	38.8	9.1
2115	GARAGE WORK EQ	9.1	-10	-53.7	18.0
2116	OTHER WORK EQ	8.4	5	28.7	7.9
2121	BUILDINGS	28.0	0	28.2	2.6
2122	FURNITURE	9.3	5	36.6	6.3
2123	OFFICE SUPPORT EQ	6.1	5	26.5	11.2
2123	OCE-PBX	3.1	0	56.6	14.0
2123	OCE-VOICE	7.5	25	12.0	8.4
2124	COMPUTER SYSTEMS	3.0	5	42.4	17.5
2124	OCE-DATA	6.3	-1	33.3	10.7
2211	ESS-ANALOG	6.3	-1	58.3	6.8
2212	ESS-DIGITAL	11.1	1	22.0	6.9
2220	OPERATOR SYSTEMS	5.2	3	67.3	5.7
2231	RADIO	9.0	12	20.8	7.5
2232	CIRCUIT-DDS	4.2	-8	44.1	15.2
2232	CIRCUIT-DIGITAL	6.3	0	38.4	9.8
2232	CIRCUIT-ANALOG	4.7	-3	47.7	11.8
2351	PUBLIC TELE EQ	4.7	2	50.5	10.1
2362	OTHER TERM EQ	3.1	18	68.0	4.5
2411	POLES	25.0	-77	78.1	4.0
2421	AERIAL EXCH-METAL	15.2	-34	41.0	6.1
2421	AERIAL TOLL-METAL	4.5	7	58.0	7.8
2422	UNGRD EXCH-OPTIC	17.6	-16	17.9	5.6
2422	UNGRD TOLL-OPTIC	16.6	0	13.9	5.2
2422	UNGRD EXCH-METAL	17.8	-8	45.2	3.5
2422	UNGRD TOLL-METAL	6.3	24	54.2	3.5
2423	BURIED EXCH-OPTIC	18.8	-10	14.6	5.1
2423	BURIED TOLL-OPTIC	15.3	0	21.4	5.1
2423	BURIED EXCH-METAL	16.0	-13	33.0	5.0
2423	BURIED TOLL-METAL	7.9	-2	55.3	5.9
2424	SUBMARINE-METAL	14.8	0	70.8	2.0
2426	INTRA BLDG-OPTIC	14.9	-6	9.7	6.5
2426	INTRA BLDG-METAL	11.3	-16	44.1	6.4
2441	UNGRD CONDUIT	47.0	-5	24.8	1.7

The figures in Columns B, C, and D are percentages of gross book cost.

Effective January 1, 1991

Rate Category	Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	2.9	14	51.9	11.8	-116
2114	SPECIAL PURPOSE VEH.	16.1	9	46.5	2.8	-2
2115	GARAGE WORK EQUIP.	15.6	9	30.0	3.9	-3
2116	OTHER WORK EQUIPMENT	15.8	9	33.4	3.6	-41
2121	BUILDINGS	28.0	-2	25.2	2.7	-85
2122	FURNITURE	8.7	4	29.5	7.6	4
2123	OFFICE EQUIPMENT	4.8	1	-11.2	23.0	0
2124	GEN. PURP. COMPUTERS	3.5	2	45.9	14.9	133
2211	ELECTRONIC ANALOG @	---	0	44.6	---	366
2212	ELECTRONIC DIGITAL	11.1	3	16.5	7.3	142
2215	ELECTROMECH SWITCH	9.8	-5	79.1	2.6	0
2220	OPERATOR SYSTEMS	9.0	3	31.9	7.2	0
2231	RADIO SYSTEMS	5.6	0	63.5	6.5	-158
2232	CIRCUIT ANALOG	5.5	0	25.2	13.6	172
2232	CIRCUIT DDS	4.2	2	43.2	13.0	8
2232	CIRCUIT DIGITAL	6.4	2	25.8	11.3	0
2341	PBX DDS	---	0	100.0	5.0	0
2351	PUBLIC TEL. EQUIP.	4.8	0	74.6	5.3	-41
2362	OTHER TERMINAL EQUIP	2.3	-1	50.0	22.2	74
2411	POLE LINES	18.9	-26	86.2	2.1	640
2421	AERIAL CABLE EXCH.	13.4	-9	58.7	3.8	505
2421	AERIAL CA. INTEROFC.	13.5	-21	60.1	4.5	37
2422	UG. CABLE NON MET	24.0	-4	15.7	3.7	13
2422	U.G. CABLE EX - MET	19.0	-2	43.8	3.1	401
2422	U.G. CABLE INT MET	15.1	-5	46.2	3.9	32
2423	BUR CA INTEROFC MET	12.6	0	60.5	3.1	86
2423	BURIED CABLE NON-MET	24.0	0	12.6	3.6	0
2423	BUR. CABLE EXCH. MET	21.0	-3	33.2	3.3	271
2426	INTRABLDG. NET. CAB.	11.1	-2	46.1	5.0	0
2431	AERIAL WIRE	3.5	-25	125.4	0.0	175
2441	CONDUIT SYSTEMS	38.0	-3	18.8	2.2	18

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Electronic Analog Account is to be amortized over a sixty month period ending December 31, 1995.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW JERSEY BELL TEEPHONE COMPANY

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	5.6	8	35.1	10.2	-345
2113	AIRCRAFT	3.2	31	57.7	3.5	-20
2115	GARAGE WORK	6.6	0	13.9	13.0	-14
2116	OTHER WORK EQPT	6.3	0	37.4	9.9	-198
2121	BUILDINGS	30.0	3	26.8	2.3	-1583
2122	FURNITURE	10.4	1	25.1	7.1	213
2123	COMP COMM EQ	5.2	3	44.1	10.2	0
2123	OFC. SUP. EQ.	4.5	11	40.0	10.9	199
2124	COMPUTERS	3.3	1	44.6	16.5	0
2211	ANALOG SWITCH	5.4	0	37.1	11.6	12829
2212	DIGITAL SWITCH	11.1	3	20.6	6.9	278
2220	OP SYS ANALOG	2.0	0	43.8	28.1	99
2220	OPER SYS DIG	7.0	3	43.2	7.7	0
2231	RADIO SYSTEMS	7.9	-5	45.1	7.6	-69
2232	ANALOG CKT	5.5	-4	56.4	8.7	6384
2232	DIGITAL CKT	7.0	1	33.9	9.3	6435
2232	DIGITAL SYS	5.4	0	57.9	7.8	0
2351	PUBLIC TELE.	6.5	3	46.0	7.8	217
2362	OTHER TERM	5.3	-1	59.5	7.8	0
2411	POLES	21.0	-87	55.3	6.3	3505
2421	AERIAL CA-SUB	14.2	-7	38.0	4.9	19706
2421	AERIAL CA.-TRK	9.7	-1	22.9	8.1	177
2422	U.G. CA.-SUB	18.2	-41	32.8	5.9	5680
2422	U.G. CA.-TRUNK	11.5	-7	39.3	5.9	2052
2423	BURIED CABLE	18.2	-7	27.6	4.4	2681
2424	SUBMARINE CABLE	11.3	-10	66.7	3.8	39
2426	INTRABLDG CABLE	11.7	-10	52.1	4.9	0
2441	CONDUIT SYSTEMS	44.0	-5	24.9	1.8	3691

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC BELL

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.6	12	35.0	11.5	53
2114	SPECIAL PURPOSE VEH	3.0	51	39.7	3.1	0
2115	GARAGE WORK EQPT	5.2	-6	37.3	13.2	2
2116	OTHER WORK EQUIPMENT	7.4	3	33.9	8.5	27
2121	BUILDINGS	32.0	-4	11.8	2.9	-15621
2122	FURNITURE	11.2	3	30.2	6.0	606
2123	OFFICE SUPPORT EQPT	6.5	3	22.4	11.5	133
2123	COMPANY COMMUN EQPT	3.9	-1	59.4	10.7	-1519
2124	GEN'L PURPOSE COMPUTERS	2.7	1	60.4	14.3	0
2211	ANALOG ELECT SWITCH	7.5	-1	40.0	8.1	32042
2212	DIGITAL ELECT SWITCH	11.1	3	23.3	6.6	11688
2215	STEP BY STEP	---	-10	90.8	---	@
2215	CROSSBAR	---	-6	106.0	---	*
2220	OPERATOR SYS-XBAR	2.2	-2	75.6	12.0	0
2220	OPERATOR SYS-ANALOG	2.6	-3	35.7	25.9	0
2220	OPERATOR SYS-DIGITAL	5.5	5	14.2	14.7	0
2231	RADIO SYSTEMS	6.7	-2	43.7	8.7	1336
2232	DIGITAL DATA SYSTEMS	4.5	-4	59.5	9.9	1687
2232	DIGITAL CIRC-OTHER	6.6	1	42.7	8.5	27614
2232	ANALOG CIRC-OTHER	4.8	0	52.8	9.8	19581
2351	PUBLIC TEL TERM EQPT	3.4	8	68.8	6.8	-170
2362	OTHER TERMINAL EQPT	2.5	-3	51.3	20.7	-1065
2411	POLES	18.5	-84	60.7	6.7	6382
2421	AERIAL CABLE-EXCH	13.2	-14	42.6	5.4	31385
2421	AERIAL CA-INTEROFC	7.4	-10	82.0	3.8	1853
2422	U.G.CABLE-EXCHANGE	18.0	-12	33.1	4.4	25657
2422	U.G. CABLE-INTEROFC	7.9	-3	41.4	7.8	7530
2423	BURIED CABLE-EXCH	15.0	-6	37.5	4.6	14087
2423	BURIED CA-INTEROFC	7.1	-2	49.1	7.5	2349
2424	SUBMARINE CABLE	3.4	-12	87.8	7.1	452
2426	INTRABLDG NETWORK CA	11.5	-14	38.8	6.5	0
2431	AERIAL WIRE	4.8	-39	74.7	13.4	-1215
2441	UNDERGROUND CONDUIT	44.0	-18	22.8	2.2	5759

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Step-by-Step Account is to be amortized over a twelve month period ending December 31, 1991.

* As described in paragraph 7 of the Order, the net service value for the Crossbar Account is to be amortized over a thirty-six month period ending December 31, 1993.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - ARIZONA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	3.9	2	38.1	15.4	-9
2114	SPEC PURPOSE VEHICLE	15.0	13	0.0	5.8	0
2115	GARAGE WORK EQUIP	12.3	13	-66.9	12.5	-19
2116	OTHER WORK EQUIP	12.5	13	23.3	5.1	-269
2121	BUILDINGS	28.0	-10	17.7	3.3	456
2122	FURNITURE	8.6	3	21.2	8.8	33
2123	OFFICE EQUIPMENT	5.0	5	35.5	11.9	13
2123	COMPANY COMM EQUIP	4.0	1	66.6	8.1	-14
2124	GEN PURPOSE CMPTR	3.1	5	47.4	15.4	0
2211	ANALOG SW EQUIP	8.1	2	40.1	7.1	4845
2212	DIGITAL SW EQUIP	11.1	3	17.3	7.2	0
2215	CROSSBAR SW EQUIP	---	-4	-163.0	---	@
2215	STEP BY STEP EQUIP	3.4	-5	72.1	9.7	0
2220	OPER SYS - OTHER *	---	0	7.9	---	87
2220	OPER SYS - UNIVERSAL	8.0	0	0.0	12.5	0
2231	RADIO SYSTEMS	8.2	3	35.8	7.5	-124
2232	CIRCUIT DDS	4.0	10	61.7	7.1	159
2232	CIRCUIT DIGITAL	7.2	2	30.3	9.4	0
2232	CIRCUIT EQUIP-ANALOG	4.8	0	57.0	9.0	4056
2351	PUB TEL TERM EQUIP	---	5	95.1	5.0	0
2362	OTHER TERM EQUIP	5.3	2	38.0	11.3	0
2411	POLE LINES	14.0	-42	45.4	6.9	-1030
2421	AERIAL CABLE METAL	14.0	-23	32.6	6.5	1501
2421	AERIAL CABLE NON MET	17.8	-20	11.7	6.1	0
2422	UNDGRD CABLE METAL	17.7	-9	30.8	4.4	3822
2422	UNDGRD CABLE NON MET	20.0	-10	9.0	5.1	0
2423	BURIED CABLE METAL	16.4	-2	27.9	4.5	3766
2423	BURIED CABLE NON MET	22.0	-7	9.7	4.4	0
2424	SUB CABLE MET	23.0	0	-99.3	8.7	0
2424	SUB CABLE NON MET	30.0	0	0.0	3.3	0
2426	INTRA BLDG METAL	11.2	-7	35.1	6.4	-1982
2426	INTRA BLDG NON MET	16.3	-6	-1.3	6.6	0
2431	AERIAL WIRE	6.7	-36	23.2	16.8	335
2441	CONDUIT SYSTEMS	47.0	-15	17.0	2.1	541

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Crossbar Account is to be amortized over a forty-eight month period ending December 31, 1994.

* As described in paragraph 7 of the Order, the net service value for the Operator Systems-Other Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - COLORADO

Effective January 1, 1991

	Rate Category Description		Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES		4.0	14	48.6	9.4
2113	AIRCRAFT		2.5	50	37.8	4.9
2114	SPEC PURPOSE VEHICLE		11.3	2	32.4	5.8
2115	GARAGE WORK EQUIP		11.8	2	4.2	7.9
2116	OTHER WORK EQUIP		11.7	2	45.0	4.5
2121	BUILDINGS		30.0	-10	20.7	3.0
2122	FURNITURE		9.2	1	23.8	8.2
2123	OFFICE EQUIPMENT		6.0	3	34.6	10.4
2123	COMPANY COMM EQUIP		4.0	1	65.4	8.4
2124	GEN PURPOSE CMPTR		3.3	6	51.6	12.8
2211	ANALOG SW EQUIP		7.1	0	40.4	8.4
2212	DIGITAL SW EQUIP		11.0	3	16.3	7.3
2215	CROSSBAR SW EQUIP	@	---	-4	25.4	---
2215	STEP BY STEP EQUIP	*	---	-5	66.9	---
2220	OPER SYS - OTHER	#	---	0	0.8	---
2220	OPER SYS - UNIVERSAL		8.0	0	0.0	12.5
2231	RADIO SYSTEMS		6.2	11	37.0	8.4
2232	CIRCUIT ANALOG		4.5	-2	50.1	11.5
2232	CIRCUIT DDS		4.3	-3	57.7	10.5
2232	CIRCUIT DIGITAL		7.5	4	31.8	8.6
2351	PUB TEL TERM EQUIP		3.8	5	93.1	0.5
2362	OTHER TERM EQUIP		7.2	-4	80.4	3.3
2411	POLE LINES		12.8	-56	66.5	7.0
2421	AERIAL CABLE MET		13.7	-32	37.0	6.9
2421	AERIAL CABLE NON MET		19.4	-30	10.3	6.2
2422	UNDGRD CABLE MET		17.5	-10	31.0	4.5
2422	UNDGRD CABLE NON MET		19.7	-12	15.6	4.9
2423	BURIED CABLE MET		15.9	-3	28.1	4.7
2423	BURIED CABLE NON MET		21.0	-6	10.5	4.5
2424	SUB CABLE MET		24.0	0	35.8	2.7
2424	SUB CABLE NON MET		16.9	0	18.2	4.8
2426	INTRA BLDG CA MET		11.1	-4	34.4	6.3
2426	INTRA BLDG NON MET		12.3	-8	11.9	7.8
2431	AERIAL WIRE		5.6	-153	69.9	32.7
2441	CONDUIT SYSTEMS		44.0	-11	19.4	2.1

The figures in Columns B, C, and D are percentages of gross book cost.

@ As described in paragraph 7 of the Order, the net service value for the Crossbar Account is to be amortized over a thiry month period ending June 30, 1993.

* As described in paragraph 7 of the Order, the net service value for the Step-by-Step Account is to be amortized over a thirty-six month period ending December 31, 1993.

As described in paragraph 7 of the Order, the net service value for the Operator Systems-Other Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - IDAHO

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	3.6	11	47.4	11.6	-34
2114	SPEC PURPOSE VEHICLE	13.1	12	13.7	5.7	0
2115	GARAGE WORK EQUIP	12.3	12	-262.1	28.5	-8
2116	OTHER WORK EQUIP	12.1	12	45.5	3.5	-118
2121	BUILDINGS	26.0	-1	27.2	2.8	156
2122	FURNITURE	10.1	1	33.9	6.4	-7
2123	OFFICE EQUIPMENT	5.7	0	18.7	14.3	-7
2123	COMPANY COMM EQUIP	3.9	1	67.1	8.2	0
2124	GEN PURPOSE CMPTR	2.6	3	67.8	11.2	0
2211	ANALOG SW EQUIP	5.9	2	45.8	8.8	1303
2212	DIGITAL SW EQUIP	11.2	3	16.3	7.2	0
2215	CROSSBAR SW EQUIP	---	-4	97.7	---	a
2215	STEP BY STEP EQUIP	---	-5	84.4	---	a
2220	OPERATOR SYSTEMS	2.1	0	29.4	33.6	2
2231	RADIO SYSTEMS	8.7	-5	39.9	7.5	-99
2232	CIRCUIT ANALOG	4.5	-2	47.0	12.2	216
2232	CIRCUIT DDS	5.0	-4	39.6	12.9	0
2232	CIRCUIT DIGITAL	7.6	0	27.3	9.6	0
2351	PUB TEL TERM EQUIP	3.2	5	92.4	0.8	0
2362	OTHER TERM EQUIP	4.3	1	32.9	15.4	0
2411	POLE LINES	11.7	-56	65.4	7.7	252
2421	AERIAL CABLE MET	12.6	-26	39.7	6.8	587
2421	AERIAL CABLE NON MET	16.2	-25	3.2	7.5	0
2422	UNDGRD CABLE MET	18.1	-8	31.6	4.2	519
2422	UNDGRD CABLE NON MET	21.0	-13	15.3	4.7	0
2423	BURIED CABLE MET	17.7	-3	30.9	4.1	540
2423	BURIED CABLE NON MET	22.0	-4	16.5	4.0	0
2424	SUB CABLE MET	22.0	-1	46.4	2.5	-1
2424	SUB CABLE NON MET	30.0	0	0.0	3.3	0
2426	INTRA BLDG CA MET	12.6	-1	39.9	4.8	-18
2426	INTRA BLDG NON MET	12.8	-14	38.6	5.9	0
2431	AERIAL WIRE	4.8	-123	-1.7	46.8	-5
2441	CONDUIT SYSTEMS	46.0	-5	20.2	1.8	73

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13 and FCC 88-14, released January 21, 1988, are continued.

a As described in paragraph 7 of the Order, the net service values for the Crossbar and Step-by-Step accounts are to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - MONTANA

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	4.0	10	51.2	9.7	0
2114	SPEC PURPOSE VEHICLE	12.5	13	7.3	6.4	0
2115	GARAGE WORK EQUIP	13.8	13	-26.8	8.2	-3
2116	OTHER WORK EQUIP	12.7	13	31.9	4.3	-167
2121	BUILDINGS	20.0	-10	31.2	3.9	582
2122	FURNITURE	10.1	7	41.5	5.1	-14
2123	OFFICE EQUIPMENT	4.3	7	30.7	14.5	-6
2123	COMPANY COMM EQUIP	3.6	1	84.0	4.2	0
2124	GEN PURPOSE CMPTR	2.3	5	79.6	6.7	0
2211	ANALOG SW EQUIP	5.4	2	47.7	9.3	554
2212	DIGITAL SW EQUIP	11.1	3	17.7	7.1	0
2215	CROSSBAR SW EQUIP	2.4	-4	53.1	21.2	0
2215	STEP BY STEP EQUIP	3.4	-5	71.3	9.9	0
2220	OPERATOR SYSTEMS @	8.0	0	0.0	12.5	17
2231	RADIO SYSTEMS	8.9	-3	51.0	5.8	-8
2232	CIRCUIT ANALOG	5.4	0	45.7	10.1	481
2232	CIRCUIT DDS	4.1	15	8.7	18.6	0
2232	CIRCUIT DIGITAL	7.4	2	27.6	9.5	0
2351	PUB TEL TERM EQUIP	7.3	5	80.4	2.0	0
2362	OTHER TERM EQUIP	4.2	9	54.7	8.6	0
2411	POLE LINES	15.1	-64	95.7	4.5	1066
2421	AERIAL CABLE MET	16.4	-31	34.6	5.9	-31
2421	AERIAL CABLE NON MET	30.0	-25	0.0	4.2	0
2422	UNDGRD CABLE MET	17.2	-20	39.1	4.7	400
2422	UNDGRD CABLE NON MET	21.0	-15	15.9	4.7	0
2423	BURIED CABLE MET	17.9	3	28.8	3.8	46
2423	BURIED CABLE NON MET	23.0	-6	8.7	4.2	0
2424	SUB CABLE MET	19.3	0	48.6	2.7	-1
2424	SUB CABLE NON MET	30.0	0	0.0	3.3	0
2426	INTRA BLDG CA MET	13.1	-9	39.3	5.3	26
2426	INTRA BLDG NON MET	9.2	-10	6.0	11.3	0
2431	AERIAL WIRE	4.6	-100	87.0	24.6	0
2441	CONDUIT SYSTEMS	42.0	-15	28.6	2.1	86

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Opertor Systems Account is to be amortized over a twelve month period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - NEW MEXICO

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	3.5	3	51.8	12.9	61
2114	SPEC PURPOSE VEHICLE	14.0	6	0.0	6.7	0
2115	GARAGE WORK EQUIP	12.1	6	-61.6	12.9	-3
2116	OTHER WORK EQUIP	11.2	6	36.2	5.2	-138
2121	BUILDINGS	26.0	-6	23.5	3.2	-98
2122	FURNITURE	10.8	1	41.6	5.3	91
2123	OFFICE EQUIPMENT	4.9	0	74.3	5.2	0
2123	COMPANY COMM EQUIP	3.7	4	65.7	8.2	0
2124	GEN PURPOSE CMPTR	2.8	3	67.3	10.6	0
2211	ANALOG SW EQUIP	6.5	0	44.2	8.6	2189
2212	DIGITAL SW EQUIP	11.1	2	19.1	7.1	0
2215	CROSSBAR SW EQUIP	---	-4	-161.0	---	@
2215	STEP BY STEP EQUIP	1.8	-5	38.0	37.2	0
2220	OPERATOR SYSTEMS	3.5	3	6.7	25.8	0
2231	RADIO SYSTEMS	5.7	5	29.4	11.5	200
2232	CIRCUIT DDS	2.5	1	35.6	25.4	-12
2232	CIRCUIT DIGITAL	6.5	0	28.0	11.1	0
2232	CIRCUIT EQUIP-ANALOG	3.7	-2	47.8	14.6	1186
2351	PUB TEL TERM EQUIP	4.0	5	87.1	2.0	0
2362	OTHER TERM EQUIP	5.3	-4	36.5	12.7	0
2411	POLE LINES	10.5	-43	58.2	8.1	-211
2421	AERIAL CABLE METAL	14.2	-33	39.2	6.6	467
2421	AERIAL CABLE NON MET	19.7	-29	3.9	6.4	0
2422	UNDGRD CABLE METAL	17.3	-13	30.5	4.8	346
2422	UNDGRD CABLE NON MET	22.0	-17	14.0	4.7	0
2423	BURIED CABLE METAL	17.2	-4	31.8	4.2	1340
2423	BURIED CABLE NON MET	22.0	-4	14.1	4.1	0
2424	SUB CABLE MET	19.1	0	44.3	2.9	0
2424	SUB CABLE NON MET	30.0	0	0.0	3.3	0
2426	INTRA BLDG CA METAL	11.7	-17	40.8	6.5	45
2426	INTRA BLDG NON MET	15.7	-17	18.0	6.3	0
2431	AERIAL WIRE	6.3	-73	19.1	24.4	0
2441	CONDUIT SYSTEMS	46.0	-14	19.0	2.1	28

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

@ As described in paragraph 7 of the Order, the net service value for the Crossbar Account is to be amortized over a twenty-four month period ending December 31, 1992.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - UTAH

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.4	13	47.0	9.1
2114	SPEC PURPOSE VEHICLE	10.6	1	3.8	9.0
2115	GARAGE WORK EQUIP	11.5	1	41.8	5.0
2116	OTHER WORK EQUIP	11.4	1	26.3	6.4
2121	BUILDINGS	32.0	-2	24.6	2.4
2122	FURNITURE	7.3	3	29.4	9.3
2123	OFFICE EQUIPMENT	4.7	4	54.5	8.8
2123	COMPANY COMM EQUIP	2.1	1	89.9	4.3
2124	GEN PURPOSE CMPTR	3.0	3	70.6	8.8
2211	ANALOG SW EQUIP	6.9	1	45.7	7.7
2212	DIGITAL SW EQUIP	11.1	3	21.5	6.8
2215	CROSSBAR SW EQUIP	1.5	-4	86.9	11.4
2215	STEP BY STEP EQUIP	2.4	-5	65.6	16.4
2220	OPER SYS - OTHER @	---	0	9.1	---
2220	OPER SYS - UNIVERSAL	8.0	0	0.0	12.5
2231	RADIO SYSTEMS	8.2	4	41.1	6.7
2232	CIRCUIT ANALOG	3.9	-2	61.7	10.3
2232	CIRCUIT DDS	3.6	0	33.6	18.4
2232	CIRCUIT DIGITAL	7.2	2	28.9	9.6
2351	PUB TEL TERM EQUIP	---	5	95.0	5.0
2362	OTHER TERM EQUIP	6.2	3	65.5	5.1
2411	POLE LINES	15.3	-45	47.1	6.4
2421	AERIAL CABLE MET	13.5	-23	40.0	6.1
2421	AERIAL CABLE NON MET	30.0	-25	0.0	4.2
2422	UNDGRD CABLE MET	16.5	-19	37.5	4.9
2422	UNDGRD CABLE NON MET	22.0	-19	11.0	4.9
2423	BURIED CABLE MET	17.4	-5	30.8	4.3
2423	BURIED CABLE NON MET	21.0	-5	9.7	4.5
2424	SUB CABLE MET	17.5	0	-18.5	6.8
2424	SUB CABLE NON MET	30.0	0	0.0	3.3
2426	INTRA BLDG CA MET	10.7	-3	37.7	6.1
2426	INTRA BLDG NON MET	15.1	-8	4.2	6.9
2431	AERIAL WIRE	5.7	-25	39.0	15.1
2441	CONDUIT SYSTEMS	44.0	-7	24.5	1.9

The figures in Columns B, C, and D are percentages of gross book cost.

@ As described in paragraph 7 of the Order, the net service value for the Operator Systems-Other Account is to be amortized over an eighteen month period ending June 30, 1992.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
US WEST COMMUNICATIONS, INC. - WYOMING

Effective January 1, 1991

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	MOTOR VEHICLES	2.9	3	52.4	15.4	0
2114	SPEC PURPOSE VEHICLE	10.6	1	10.3	8.4	0
2115	GARAGE WORK EQUIP	11.0	1	-21.7	11.0	-13
2116	OTHER WORK EQUIP	10.9	1	23.2	7.0	-161
2121	BUILDINGS	25.0	-9	27.7	3.3	173
2122	FURNITURE	7.8	1	34.5	8.3	22
2123	OFFICE EQUIPMENT	5.8	1	57.0	7.2	16
2123	COMPANY COMM EQUIP	2.8	0	76.3	8.5	0
2124	GEN PURPOSE CMPTR	3.1	4	85.4	3.4	0
2211	ANALOG SW EQUIP	6.0	3	45.4	8.6	800
2212	DIGITAL SW EQUIP	11.0	3	14.4	7.5	0
2215	CROSSBAR SW EQUIP	2.3	-2	61.1	17.8	0
2215	STEP BY STEP EQUIP	2.9	-5	88.9	5.6	0
2220	OPERATOR SYSTEMS	8.0	0	0.0	12.5	a
2231	RADIO SYSTEMS	7.4	-12	46.7	8.8	200
2232	CIRCUIT DDS	---	0	100.0	5.0	0
2232	CIRCUIT ANALOG	6.5	0	56.4	6.7	1713
2232	CIRCUIT DIGITAL	7.5	2	20.7	10.3	0
2351	PUB TEL TERM EQUIP	---	5	95.0	5.0	0
2362	OTHER TERM EQUIP	3.1	3	42.9	17.5	0
2411	POLE LINES	14.2	-79	88.4	6.4	-228
2421	AERIAL CABLE MET	14.0	-25	35.7	6.4	262
2421	AERIAL CABLE NON MET	18.4	-24	8.8	6.3	0
2422	UNDGRD CABLE MET	18.9	-6	33.4	3.8	429
2422	UNDGRD CABLE NON MET	15.0	-14	6.5	7.2	0
2423	BURIED CABLE MET	16.6	-4	30.8	4.4	-501
2423	BURIED CABLE NON MET	21.0	-8	5.5	4.9	0
2424	SUB CABLE MET	12.4	0	58.3	3.4	0
2424	SUB CABLE NON MET	30.0	0	0.0	3.3	0
2426	INTRA BLDG CA MET	10.7	-5	39.7	6.1	8
2426	INTRA BLDG NON MET	25.0	-7	35.5	2.9	0
2431	AERIAL WIRE	4.3	-16	36.2	18.6	0
2441	CONDUIT SYSTEMS	44.0	-7	18.3	2.0	11

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

a As described in paragraph 7 of the Order, the net service value for the Operator Systems-Other Account is to be amortized over a twelve month period ending December 31, 1991.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies — AAD 91-46

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 1992; Released: January 31, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In an Order Inviting Comments (OIC),[1] we proposed to revise four Form M schedules, and incorporate these four and eight additional Form M schedules into the Commission's Automated Reporting Management Information System (ARMIS). Based on an analysis of the pleadings received in this proceeding, we have decided to adopt the proposals in our OIC with some modifications, as discussed in the succeeding paragraphs. In order to allow adequate time for preparation of these reports, the due date for the 1991 submittal is hereby extended to 90 days after publication of a summary of this Order in the Federal Register.

2. Form M is a paper report comprised of 45 schedules which contain financial, corporate, and statistical data. Communications common carriers having annual operating revenues in excess of $100 million must file this report annually. ARMIS is an automated report which contains financial and statistical data required by the Commission to administer its accounting, joint cost, jurisdictional separations, rate base, and access charge rules. ARMIS consists of nine reports[2] and is filed by all Tier 1 local exchange carriers.[3]

3. When the Commission established ARMIS in 1987, two Form M schedules, the balance sheet and income statement, were incorporated into ARMIS. The Commission also directed the Common Carrier Bureau to review the Form M to determine which schedules were no longer necessary, which schedules required revision, which new schedules must be added to satisfy our data collection needs, and which additional schedules should be considered for inclusion into ARMIS.[4] After completing a further review of the Form M, in September 1991 we released the OIC proposing that twelve additional schedules be incorporated into ARMIS.

II. SUMMARY OF PROPOSAL

4. The twelve Form M schedules[5] selected for incorporation into ARMIS contain information pertaining to the statement of cash flows, investments in affiliated companies, transactions between affiliates, deferred income taxes, pension costs and statistical data. In the OIC, we proposed to incorporate these schedules into ARMIS because automation would allow us to accumulate, check, analyze, and publish the data in a more timely and efficient manner.

5. We proposed to revise four of these schedules. We proposed to revise Form M Schedule I-3, General Services and Licenses, by expanding the information collected to cover all services provided by affiliates to the reporting company; by including information on services sold by a carrier to its affiliates; and by including information on whether the prices of services are based on tariffed rates, prevailing prices or fully distributed costs. We proposed to revise Schedule B-3c, Analysis of Assets Purchased from or Sold to Affiliates, by including information on whether the transactions were recorded at cost, fair market value, tariffed rates, or prevailing prices; and by eliminating account number and accumulated depreciation information. We also proposed to modify Form M Schedules S-2 and S-3 by providing additional information about the technology and service characteristics of carrier access lines.

6. In the OIC we sought comments on the proposed ARMIS tables, the proposed instructions to each table, including the definitions to the statistical tables, and suggestions for other Form M schedules which may lend themselves to automation and inclusion in the ARMIS reporting system. Finally, to avoid unnecessary work by carriers that are required to file both Form M and ARMIS reports, we proposed that they provide paper copies of ARMIS tables with their Form M filings in lieu of the corresponding Form M schedules.

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[1] Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, *Order Inviting Comments*, DA 91-1113 released September 4, 1991.

[2] The nine ARMIS Reports are: the Quarterly Report (43-01); the USOA Report (43-02); the Joint Cost Report (43-03); the Access Report (43-04); the Quarterly Service Quality Report (43-05); the Semi-Annual Service Quality Report (43-06); the Infrastructure Report (43-07); the Forecast Report (495-A); and the Actual Usage Report (495-B).

[3] Tier 1 carriers are defined as those companies having more than $100 million in total company regulated revenues. Commission Requirements for Cost Support Material to be filed with Access Tariff on March 1, 1985, Public Notice, Mimeo No. 2133, released January 25, 1985.

[4] Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules) CC Docket No. 86-182, 2 FCC Rcd 5770 (1987), *modified on recon.*, 3 FCC Rcd 6375 (1988) (released October 14, 1988).

[5] The specific Form M schedules we proposed to include in the ARMIS USOA Report were: B-2, Statement of Cash Flows; B-3a, Investments in Affiliated Companies; B-3b, Investments in Affiliated Companies - Cost Method and Nonaffiliated Companies; B-3c, Analysis of Assets Purchased from or Sold to Affiliates; B-11, Net Deferred Operating Income Taxes; B-12, Net Deferred Nonoperating Income Taxes; I-3, General Services and Licenses; I-4, Pension Cost; S-1, Outside Plant Statistics; S-2, Switched Access Lines in Service by Technology; S-3, Access Lines in Service by Customer; and S-4, Telephone Calls.

7. Interested parties were invited to file comments on or before October 4, 1991. Reply comments were due on or before October 21, 1991. Comments were received from thirteen parties and reply comments from six parties.[6]

III. COMMENTS AND DISCUSSION

A. Automation of Twelve Form M Schedules

8. All of the commenting parties generally support the proposal to automate and incorporate the twelve Form M schedules into ARMIS. They agree that the Commission's efforts to automate these schedules will provide an effective and efficient way to collect and analyze data, thereby conserving time and resources for both the Commission and the carriers. Because of the benefits we believe will result from the automation of these schedules we will adopt our proposal and incorporate these twelve Form M schedules into ARMIS. Some of the commenting parties do not agree, however, as to the amount of information needed on the new ARMIS tables and the timetable for filing the new ARMIS tables with the Commission. Several of these parties recommended changes to the OIC proposal to alleviate the reporting burden, to make the new ARMIS tables more useful, and to facilitate access to the ARMIS data. These recommendations and other concerns raised by commenting parties are addressed in the succeeding paragraphs.

B. Operational Statistics

9. USTA and several of the carriers oppose our proposal to incorporate statistical data into FCC Report 43-02.[7] USTA states that financial data and statistical data should be segregated into different reports. It states that requiring separate reports would enhance accountability because it would allow carriers to more easily designate appropriate officers to certify the validity of the data.[8] The Pacific Companies generally support separate reports for statistical and financial data; however, they state that there is value in including certain statistical data with the financial reports.

10. We see merit in having the carriers provide the statistical and financial data in separate reports, because we believe this will aid the Commission and others in collecting and analyzing the data. In addition, we agree with the carriers that this may improve the officer certification process. Therefore, we will adopt this recommendation and create a separate ARMIS Report (FCC Report 43-08, Operating Data) for the statistical data.

11. The Michigan staff requests that the statistical data report be changed to require carriers to report the number of multi-party lines in service. We understand Michigan's concerns about multi-party lines, inasmuch as some carriers may still have a substantial number in service. The reports under consideration here, however, are for very large carriers (i.e., those with annual revenues of $100 million or more). For these carriers, fewer than .6% of their lines are multi-party, and this figure is declining.[9] Therefore, we see no need to expand these reporting requirements to include multi-party lines.

C. Statement of Cash Flows

12. USTA, Bell Atlantic, and BellSouth request that the Commission allow the substitution of the cash flow statement contained in the SEC Form 10-K in lieu of the Statement of Cash Flows proposed in FCC Report 43-02, Table III. They claim that the minor differences in the reports do not justify the time and resources necessary to complete the proposed Table III. USTA states that, if the Bureau insists that the Statement of Cash Flows be submitted, the reporting carriers should be permitted to populate it using the SEC Form 10-K data.

13. We will not adopt USTA's suggestion that we replace the Statement of Cash Flows proposed in FCC Report 43.02 with the SEC Form 10-K Statement of Cash Flows. The Statement of Cash Flows is one of the basic financial statements which, together with the Balance Sheet and Income Statement, make up a complete set of financial statements. The balance sheets and income statements filed in ARMIS are prepared at the operating telephone company level following the accounting requirements prescribed in the USOA. The Statements of Cash Flows filed in SEC Form 10-K, on the other hand, are prepared at the holding company level and reflect accounting used for financial reporting that may depart from the USOA. Thus, cash flow statements based on SEC Form 10-K data would not match the ARMIS balance sheets and income statements. Moreover, the SEC Form 10-K Statement of Cash Flows would most likely not be uniform in format and presentation which would inhibit our ability to do computerized edit checks and compilations of the data, which would defeat the purpose of automation. Accordingly, we require that carriers file a statement of cash flows at the operating company level following the USOA accounting, as proposed.

D. Affiliate Transactions Tables

14. USTA and SNET oppose our proposal to require reporting of affiliate transaction sales volumes categorized by how they were priced (e.g., cost or tariff). They argue that the Bureau did not adequately justify the need for this data[10] and that, in any case, similar data are already provided in the Cost Allocation Manuals (CAMs).[11] We disagree with both USTA and SNET. Our affiliate transaction rules[12] specify the pricing techniques that carriers are allowed to use and the conditions under which each of these techniques can be applied. The information we are requesting is essential for our determination of whether the carriers are following these rules. Currently, these data are gathered during our audits of carriers. We have reviewed our audit program and determined that the routine reporting of these data would improve the efficiency of this program, by enhancing our ability to compare and contrast the carriers' data and thereby helping us to focus

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[6] Appendix A lists the parties filing comments and reply comments as well as the abbreviations this Order uses to identify the parties to this proceeding.

[7] BellSouth comments at p. 3; USWC comments at p. 6; United comments at p. 1, n.1; SWBT comments at p. 3; GTE comments at p. 1; Bell Atlantic comments at p. 3; the Pacific Companies comments at p. 5; and USTA comments at p. 3.

[8] USTA comments at pp. 3 and 4.

[9] See USTA *ex parte* submission dated December 19, 1991.

[10] SNET comments at p. 2.

[11] USTA reply comments at p. 5.

[12] 47 C.F.R. §32.27 and §64.902.

our audits on areas which are most questionable. Finally, contrary to USTA's contention, the carriers' CAMs do not contain sales volumes of affiliate transactions.

15. In our review of our audit program we have also determined that it is not necessary, at this time, to require carriers to routinely report affiliate transactions data by transaction, transaction type, or account, as suggested by several parties.[13] We believe we can adequately focus our audit efforts without this additional information. However, once we undertake an audit or investigation we may require this detailed information. Therefore, carriers are advised that they must maintain this information so that it can be provided, in a timely manner, upon request. Of course, the states remain free to require the reporting of any additional information which they need for state regulatory purposes.

16. USTA and USWC suggest that the reporting threshold for Tables V and VI be set at $100,000 for each affiliate. They believe this requirement will provide some relief from the reporting of insignificant transactions and will ensure that the Commission receives relevant information.[14] USTA states that the $100,000 threshold is consistent with the current threshold established by the Commission for reporting services provided to affiliates on Schedule I-3 and other Form M schedules.[15] We agree with USTA that a $100,000 threshold is adequate for our purposes at this time. Therefore, we will revise Tables V and VI to require reporting for each affiliate with whom the carriers purchased or sold assets or services of $100,000 or more.

E. Redundant Reports

17. GTE proposes that the Commission reduce redundant reporting requirements by eliminating data that are already available in existing ARMIS reports.[16] GTE believes that the requirement to file the same data under two different report headings, ARMIS and Form M, and in two different media, paper and diskette, is an unreasonable burden. USTA claims that requiring paper copies of the ARMIS report is burdensome and costly. USTA states that the inclusion in the Form M of a paper copy of the financial schedules incorporated in the ARMIS Report 43-02 may be useful, but that, once all the necessary schedules have been incorporated in ARMIS, Form M reporting should be eliminated for the Tier 1 LECs. MCI agrees with the elimination of redundant reporting requirements but believes that the Bureau should not eliminate any reporting requirements without first publishing its proposal for comment.[17]

18. We are sensitive to the concerns expressed by the carriers that we should not establish reporting requirements that place an undue burden on them. However, we believe that the printing and copying efforts associated with providing paper copies of data comprise only a minor share of the total reporting costs. As a result, we do not believe that requiring an extra copy of these data constitutes an undue burden on the carriers. Moreover, paper filings of these reports are necessary because the data must be made available in a format and media appropriate for public use. Much of the public does not have access to computer equipment necessary to extract data from the computer readable media used in ARMIS filings, i.e., diskettes. Moreover, the FCC does not have the necessary equipment to allow the public access. Therefore, we will require the carriers to file a paper copy of FCC Reports 43-02 and 43-08 in the Form M.

19. We will not adopt GTE's suggestion that we avoid redundancy by eliminating statistical data which are available in other ARMIS reports. We are well aware of the statistical data currently required in other ARMIS reports. However, not all the ARMIS reports are filed by the same carriers, filed at the same time, or used for the same purpose. For example, the Infrastructure Report (43-07) is filed only by mandatory price cap companies; it is filed at the study area level; it is not filed until June 30; and it is designed specifically to monitor price cap regulation. In our continuing study of which Form M schedules are suitable for inclusion in ARMIS, we will eliminate redundant data reporting requirements to the extent practical. Finally, as suggested by MCI, we intend to continue our practice of seeking public comment on proposals to eliminate reporting requirements.[18]

F. Study Area Level Reporting on FCC Report 43-02

20. MCI states that it supports the modernization of FCC Report 43-02 but believes that this report should be supplied on a study area basis (i.e., by state).[19] The LECs disagree, arguing that this report was designed to provide company-wide data and not study area data.[20]

21. The LECs are correct that FCC Report 43-02 was designed to contain company-wide data. This report contains company level reporting for every account in the Uniform System of Accounts,[21] including those accounts for which study area disaggregation would serve no regulatory purpose. For example, we see no reason to assign the various long-term debt accounts by study area since the carriers do not issue debt by state. The data for monitoring requested by MCI are available in other ARMIS reports. The FCC Reports 43-01, 43-03 and 43-04 are available by study area and are the appropriate reports for monitoring as suggested by MCI. Therefore, we will not expand the FCC Report 43-02 to include study area data.[22]

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[13] Michigan at p. 1; Iowa at pp. 2 and 3; and MCI at pp. 2 and 3.

[14] USTA comments at p. 12 and Appendix B; USWC comments at p. 4.

[15] Instruction 2 of Schedule I-3, General Services and Licenses, requires the companies to enter in column (a), the name of the affiliate to whom respondents paid $100,000 or more for services received under a license agreement, a general service contract, or other arrangement providing for the furnishing of general accounting, engineering, financial, legal, patent and other general services.

[16] GTE comments at p. 7.

[17] MCI reply comments at p. 3.

[18] We will not address USTA's recommendation to eliminate the monthly operating and expense reports (MR-1, MR-4 and MR-5) in this Order since it is outside the scope of the instant proceeding.

[19] MCI comments at p. 5.

[20] SWBT reply comments at p. 2; USTA reply comments at pp. 8 and 9 footnote 25.

[21] 47 C.F.R. Part 32.

[22] We also do not agree with MCI's request that FCC Report 43-02 be modified to capture the net prorated allocation of corporate expenses and investments between affiliated LECs.

G. Extension of Filing Dates

22. In the OIC we stated that we intended to incorporate the new ARMIS tables into the USOA Report in time for the carriers' 1991 annual submissions, scheduled to be filed on April 1, 1992. USTA and the commenting carriers state that an extension of the filing date for the FCC Report 43-02 is required because of the large number of Form M schedules being automated and the short time available to implement the required changes. [23] These parties request that the 1991 Form M and FCC Report 43-02 be due 120 days after the issuance of a final Order including the data specifications or on May 1, 1992, whichever is later.[24] These parties also request that the effective date of proposed new Tables V and VI[25] be deferred for one year until the filing of calendar year 1992 reports in April 1993[26] because of the significant effort needed to track and assemble the information for these tables.[27] Finally, these parties request that the filing date for Form M be extended from the current March 31 due date to 120 days after the issuance of this Order and the associated data specifications and that the Form M filing date be changed to coincide with the April 1 filing date of the FCC Report 43-02. MCI does not oppose an extension of the filing date for the revised Report 43-02.[28]

23. We will require the carriers to file FCC Report 43-02 and FCC Report 43-08 90 days after publication of a summary of this Order in the Federal Register.[29] We believe that this provides sufficient time for the carriers to prepare and file these reports.

24. We do not agree with GTE's suggestion that filing tables which include new data elements be deferred until April 1993. Such a deferral would result in incomplete ARMIS filings for both FCC Reports 43-02 and 43-08. We believe that the collection of the additional information on affiliate transactions is necessary for monitoring carriers' compliance with the Commission's affiliate transaction rules. The additional data elements are integral parts of the information concerning the carriers' affiliate transactions and their exclusion would not provide us with a complete and meaningful picture of these activities between affiliates. Furthermore, only the requirement to report these data in an automated format is new; the existence of these data are already required by the Commission's Joint Cost Order[30] which established rules for recording the transfer of assets and the provision of services between carriers and their affiliates. [31] Since the information we are requesting should already be available for the independent CAM audits, it needs only to be automated. In addition to facilitating the collection of this information for the annual CAM audit, the automation of the affiliate transaction data will provide the information to the Commission from all reporting carriers at the same time. Therefore, we are not granting a deferral for the reporting of data in Tables V and VI.

25. We agree with those commenters who requested an extension of time to file the Form M for 1991 and who asked that we make the Form M filing date coincide with the filing date of the FCC Reports 43-02 and 43-08. Since we are allowing carriers that file both Form M and ARMIS reports to file paper Reports 43-02 and 43-08 in lieu of the corresponding Form M schedules to avoid redundant reporting, it is important that the filing dates of Form M and the Reports 43-02 and 43-08 coincide. Therefore, we are granting a waiver for the 1991 Form M to be filed on the same date that the FCC Reports 43-02 and 43-08 are due, that is, 90 days after publication of a summary of this Order in the Federal Register. The Bureau will recommend to the Commission that it revise the rules so that these filing dates will coincide in the future.

H. Requirement for Alascom to File ARMIS Reports

26. GCI states that Alascom, Inc. (Alascom) should be required to file ARMIS reports. It claims that Alascom is the only dominant Tier 1 carrier that does not file ARMIS reports with the Commission. GCI acknowledges that Alascom does file Form M reports, but states that because the Form M does not provide jurisdictionally separated data, it is not useful in evaluating many of the issues that are before the Federal-State Joint Board. MCI agrees with GCI that the Bureau should require Alascom to file ARMIS reports.

27. GCI's proposal to require that Alascom file ARMIS reports is clearly outside the scope of this proceeding and we will therefore deny it. Alascom is still required to file Form M, however, and it must do so consistent with the changes in the Form M schedules adopted in this order.

I. State Access to FCC Report 43-02 Data

28. The Michigan staff contends that the usefulness of FCC Report 43-02 to state regulators will be greatly improved if the Commission makes it accessible on an on-line, dial-up basis. Michigan states that it is willing to work with the FCC Staff and other parties to make Michigan's Electronic Mail and Bulletin Board Service available for this purpose.[32]

29. We agree with Michigan that the usefulness of data is enhanced by increased accessibility. With this objective in mind, the Bureau has developed a PC-based bulletin board system, with electronic mail capability, known as

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MCI's request goes beyond the requirements of our Part 32 USOA, and MCI has not convinced us that these requirements need to be changed.

[23] USTA comments at pp. 5-9; Bell Atlantic comments at pp. 1 and 2; BellSouth comments at p. 2; the Pacific Companies comments at pp. 2-5; SNET comments at p. 2; SWBT comments at p. 2; United comments at pp. 2 and 3; USWC comments at p. 9; and GTE comments at pp. 3-6.

[24] Bell Atlantic requests that the new automated tables not be required until June 1, 1992. Bell Atlantic comments at pp. 1 and 2.

[25] Table V is entitled "Analysis of Assets Purchased From or Sold To Affiliates;" and Table VI is entitled "Analysis of Services Purchased From or Sold To Affiliates."

[26] USTA comments at p. 7; Bell Atlantic comments at p. 2; GTE comments at p. 4; the Pacific Companies comments at p. 5; SWBT comments at p. 4; SNET comments at p. 5; and United comments at p. 2.

[27] GTE requests that all automated tables requiring new data elements be due in April 1993. GTE comments at p. 4.

[28] MCI reply comments at p. 3.

[29] Appendices D and E include the data specifications.

[30] Separation of Costs and regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *recon.*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC 6701 (1988), *aff'd subnom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

[31] 47 C.F.R. §32.27.

[32] The Michigan Staff comments at p. 1.

the FCC-State Link. The fundamental purpose of this system is to improve the flow of information between the Commission and the state commissions. This includes all account balances from the FCC Report 43-02.

J. Future Form M Automation

30. In the OIC we sought suggestions for other Form M schedules which should be included in ARMIS. Several parties recommend various additions and/or deletions.[33] GTE suggests that our current process is piecemeal and that we should complete a comprehensive review of the Form M/ARMIS schedules.[34] We agree. Therefore during 1992 we will undertake this comprehensive review.

K. Other Issues

31. We are also adopting a number of technical and clerical changes to correct and clarify certain aspects of the ARMIS schedules. Some of these changes were proposed by commenting parties, others we are implementing as a result of our own analysis of the schedules.

32. The following appendices are attached to this Order: (1) Appendix A is a list of commenting parties; (2) Appendix B is a list of the technical and clerical changes which we are adopting to the ARMIS tables on our own initiative; (3) Appendix C is a list of the changes which we are adopting to the ARMIS tables pursuant to the pleadings; (4) Appendix D is a comprehensive description of revised FCC Report 43-02, instructions, and reporting procedures; (5) Appendix E is a comprehensive description of FCC Report 43-08, instructions, and reporting procedures; and (6) Appendix F is a list of the changes made to the Annual Report Form M, instructions and schedules.

33. Implementation of the modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act of 1980.

IV. ORDERING CLAUSE

34. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215,219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 201-205, 215, 218, 219 and 220, that the ARMIS USOA Report (FCC Report 43-02) IS REVISED, ARMIS Operating Data Report (FCC Report 43-08) IS ADOPTED, and Annual Report Form M IS AMENDED, as set forth in the attached Appendices D, E and F, effective 90 days from publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

APPENDIX A

Parties Filing Comments in AAD 91-46

Bell Atlantic (Bell Atlantic)

BellSouth Corporation, South Central Bell Telephone Company, and Southern BellTelephone and Telegraph Company (BellSouth)

General Communications, Inc. (GCI)

GTE Service Corporation and its affiliated domestic telephone operating companies (GTE)

Iowa Utilities Board (Iowa)

MCI Telecommunications Corporation (MCI)

The Staff of the Michigan Public Service Commission (Michigan Staff)

Pacific Telesis (the Pacific Companies)

Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (SWBT)

United States Telephone Association (USTA)

United Telephone System companies (United)

U S West Communications, Inc. (USWC)

Parties Filing Reply Comments in AAD 91-46.

GTE

MCI

NYNEX Telephone Companies (NYNEX)

SWBT

USTA

USWC

[33] E.g., MCI comments at pp. 3 and 4; USWC comments at Attachment A.

[34] GTE reply comments at p. 6.

APPENDIX B

LIST OF CHANGES TO TABLES I AND II OF FCC REPORT 43-02

Table I - Balance Sheet Accounts:

The instruction for row 120, Total Noncash Current (excluding prepayments), is revised to read, "This amount equals the total of Row/Account 1180 + 1190 + 1200 + 1210 + 1220 - 1181 - 1191 - 1201".

The instruction for row 260, Total Telecommunications Plant in Service, is revised to read, "This amount equals the total of Row/Account 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690. This amount must also equal Row/Account 2001."

The instruction for row 350, Net Plant, is revised to read, "This amount equals row 210, column (af) less 340, column (bb)."

The instruction for row 420, Total Long Term Debt, is revised to read, "This amount equals the total of Row/Account 4210 + 4220 + 4240 + 4250 + 4260 + 4270 - 4230."

The instruction for row 450, Total Liabilities and Stockholders Equity, is revised to read, "This amount equals the total of Rows 410 + 420 + 430 + 440. This amount must also equal row 360."

The instruction for row 490, Retained Earnings (End of Year), is revised to read, "This amount equals the total of Rows 460 + 465 + 480 - 470 - 475. This amount must also equal Row/Account 4550."

The column instructions for Table I are revised and read as follows:

"Column (b), **Amount** - Enter the ending balance for the reporting period for each account identified in column (a).

Column (ab), **Beginning Balance** - Enter the balance at the beginning of the reporting period for each account identified in column (aa). This amount should equal the ending balance reported for the previous period. Otherwise, provide a footnote to explain the discrepancy.

Column (ac), **Additions** - Enter the amount representing plant added to each account during the reporting period.

Column (ad), **Retirements** - Enter the amount representing plant retired from each account during the reporting period.

Column (ae), **Transfers/Adjustments** - Enter the amount representing transfers to or from each account including adjustments made to each account during the reporting period.

Column (af), Ending Balance - Enter each account balance at the close of the reporting period. This amount equals column (ab) plus column (ac) plus column (ae) less column (ad). This formula assumes that retirements and transfers to accounts are reported as positive amounts. Any inverse amounts, e.g., "negative retirements" or transfers from accounts, are reported as negative amounts.

Column (bb), Amount - Enter the ending balance for the reporting period for each account identified in column (ba)."

Table II - Income Statement Accounts:

The instruction for row 530, Total Operating Revenues is revised to read, "This amount equals the total of Row/Account 520, 5080, 525 and 5200, less row 5300."

The instruction for row 615, Net Balance-MV, is revised to read, "For Class A companies this amount equals the total of Row/Account 6112 less 610."

The instruction for row 625, Net Balance-Aircraft, is revised to read, "For Class A companies this amount equals the total of Row/Account 6113 less 620."

The instruction for row 635, Net Balance-SPV, is revised to read, "For Class A companies this amount equals the total of Row/Acccount 6114 less 630."

The instruction for row 645, Net Balance-OWE, is revised to read, "For Class A companies this amount equals the total of Row/Account 6116 less 640."

The instruction for row 665, Net Balance-Prov, is revised to read, "For Class A companies this amount equals the total of Row/Account 6512 less 660."

The instruction for row 675, Net Balance-POA, is revised to read, "For Class A companies this amount equals the total of Row/Account 6534 less 670."

The instruction for row 685, Net Balance-Eng, is revised to read, "For Class A Companies this amount equals the total of Row/Account 6535 less 680."

N/As are inserted in row 730, columns (ac) through (af).

The instruction for row 730, Net Operating Revenue, is revised to read, "This amount equals the total of row 530, column (b) less 720, column (ab)."

The instruction for row 7100, Other Operating Income and Expenses, is revised to read, "For Class A companies this amount equals the total of Row/Account 7110 through 7160. For Class B companies this amount equals the balance of account 7100. This formula assumes that all increases to net income amounts are reported as positive amounts. Any inverse amounts, i.e., reduction to net income are reported as negative amounts."

The instruction for row 7200, Operating Taxes, is revised to read, "For Class A companies this amount equals the total of Row/Account 7220 + 7230 + 7240 + 7250 - 7210. For Class B companies this amount equals the balance of account 7200. Credit balances should be subtracted. This formula assumes that amounts for investment tax credits (accounts 7210 and 7410) are normally credits and all other tax amounts are normally debits, i.e., reduction to net income. Any inverse amounts are reported as negative amounts."

The instruction for row 7300, Nonoperating Income and Expense, is revised to read, "For Class A companies this amount equals the total of Row/Account 7310 + 7320 + 7330 + 7340 + 7350 + 7360 - 7370. For Class B companies this amount equals the balance of account 7300."

The instruction for row 7400, Nonoperating Taxes, is revised to read, "For Class A companies this amount equals the total of Row/Account 7420 + 7430 + 7440 + 7450 - 7410. For Class B companies this amount equals the balance of account 7400. This formula assumes that amounts for investment tax credits (accounts 7210 and 7410) are normally credits and all other tax amounts are normally debits, i.e., reduction to net income. Any inverse amounts are reported as negative amounts."

The instruction for row 7600, Extraordinary Items, is revised to read, "For Class A- Companies this amount equals the total of Row/Account 7610 - 7620 - 7630 - 7640. For Class B-companies this amount equals the balance of account 7600. This formula assumes that extraordinary income credits are normally credits, extraordinary income charges are normally debits and that the extraordinary tax effects (accounts 7630 and 7640) are normally a reduction to net income. Any inverse amounts are reported as negative amounts."

The instruction for row 790, Net Income, is revised to read, "This amount equals the total of Row/Account 730, column (ab) + 7100, column (bb) + 7300, column (bb) + 7600, column (bb) + 7910, column (bb) + 7990, column (bb) - 7200, column (bb) - 7400, column (bb) - 7500, column (bb). This amount should also equal row 465."

Note 2 is deleted.

The columns for Table II are revised to read as follows:

"Column (b), **Amount** - Enter the ending balance for the reporting period for each account identified in column (a).

Column (ab), **Total** - Enter the ending balance for the reporting period for each account or subsidiary account identified in column (aa). This amount equals the total of columns (ac) through (af).

Column (ac), **Salaries and Wages** - Enter the amount representing salaries, wages, commissions, bonuses, incentive awards and termination payments

pursuant to Section 32.5999(f)(1) for each account identified in column (aa). Enter the number of employees at the end of the year in a footnote. This number must be broken down by full time and part time employees.

Column (ad), Benefits - Enter the amount representing pensions, savings plan contributions, worker's compensation, life and health insurance, social security and other payroll taxes pursuant to Section 32.5999(f)(2).

Column (ae), Rents - Enter the amount representing payments for the use of real and personal operating property pursuant to Section 32.5999(f)(3).

Column (af), Other Expenses - Enter the amount representing costs which cannot be classified to salaries and wages, benefits or rents pursuant to Section 32.5999(f)(4). Such items include material and supplies, contracted services, accident and damage payments, insurance premiums, traveling expenses, and other miscellaneous costs.

Column (bb), Amount - Enter the ending balance for the reporting period for each account identified in column (ba)."

APPENDIX C

LIST OF CHANGES TO TABLES III THROUGH VIII OF FCC REPORT 43-02
AND
TABLES I THROUGH IV OF FCC REPORT 43-08

43-02 (USOA Report)

Table III, Statement of Cash Flows:

Form:

"(Dollars in thousands)" is added to the heading.

Instructions:

The instruction for row 8000, Net Income/Loss, is revised to read, "Enter net income for the current reporting period as a positive number. If it is a net loss, enter the amount as a negative number. This amount must equal row 790, column (bb), Table II."

The instruction for row 8010, Depreciation and Amortization, is revised to read, "Enter the amount for these accounts for the current reporting period as a positive number. This amount must equal row 6560, column (ab), Table II."

The instruction for row 8020, Provision for Losses for Accounts Receivable, is revised to read, "Enter the amount for this account for the current reporting period as a positive number. This amount must equal row 5300, column (b), Table II."

The instruction for row 8140, Construction/Acquisition of Property, Plant and Equipment, is revised to read, "Enter the amount used for construction or acquisition of property, plant or equipment, net of AFUDC, during the current reporting period as a negative number."

The instruction for row 8340, Cash and Cash Equivalents at End of Period, is revised to read, "Enter the sum of rows 8320 and 8330. This amount equals row 1120, column (b), Table I."

Table IV, Investments in Affiliates and Other Companies:

Form:

Table IV is divided into two tables, Table IV.A and Table IV.B.

"(Dollars in thousands)" is added to the heading.

The table title is changed to "Investments in Affiliates and Other Companies".

Table IV.A: -

Row 8378 is inserted where appropriate.

Classification column (a) is inserted. All other columns are relabeled accordingly.

N/As are inserted in column (a) in rows 8350 through 8378 and 8390 through 8418; and in column (b) rows 8379, 8380 and 8419 through 8450.

Instructions:

The instruction for rows 8350 through 8378 is revised to read, "Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the 'equity method'. Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 8379) may be left blank."

The instruction for rows 8390 through 8418 is revised to read, "Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the 'cost method'. Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 8419) may be left blank."

Table IV.B:

Columns (q) through (ac) appear in Table IV.B. All columns and rows are relabeled accordingly.

Instructions are provided for the rows and columns in Table IV.B.

Table V, Analysis of Assets Purchased From or Sold To Affiliates:

Form:

The form is restructured to be Table V with subheadings A and B for purchases and sales of assets.

"(Dollars in thousands)" is added to the heading.

Classification column (a) is inserted. All other columns are relabeled accordingly.

N/As are inserted in column (a) in rows 8460 through 8498 and 8510 through 8548.

N/As are inserted in column (b), rows 8499, 8500, 8549 and 8550.

The title of column (c) is changed to Net Book Cost.

The title of column (g) is changed to Total Purchases/Sales.

The row numbers for rows 8555 through 8560 have been changed to rows 8545 through 8550.

Instructions:

The instruction for rows 8460 through 8498 is revised to read, "Each of these rows is provided for the entry of data associated with the purchase of assets from affiliates. Use one row for each affiliate, in descending order of the amount of purchases from each affiliate. Enter data in only those rows for which the reporting carrier has purchased assets from an affiliate. If the carrier has purchased assets from fewer than 38 affiliates, the remaining rows (including row 8499) may be left blank."

The instruction for rows 8510 through 8548 is revised to read, "Each of these rows is provided for the entry of data associated with the sale of assets to affiliates. Use one row for each affiliate, in descending order of the amount of sales to each affiliate. Enter data in only those rows for which the reporting carrier has sold assets to an affiliate. If the carrier has sold assets to fewer than 38 affiliates, the remaining rows (including row 8549) may be left blank."

The instruction for row 8550 is revised to read, "The total of rows 8510 through 8549."

The instruction for column (b), Name of Affiliate, is revised to read, "Enter the names of the affiliates from whom assets were purchased for $100,000 or more in rows 8460 through 8498 and to whom assets were sold for $100,000 or more in rows 8510 through 8548."

The instruction for column (c), Net Book Cost, is revised to read, "Enter the amount of assets purchased from affiliates at net book cost in rows 8460 through 8499 and assets sold to affiliates at net book cost in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c)."

The instruction for column (d), Fair Market Value, is revised to read, "Enter the amount of assets purchased from affiliates at fair market value in rows 8460 through 8499 and assets sold to affiliates at fair market value in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c)."

The instruction for column (e), Tariff, is revised to read, "Enter the amount of assets purchased from affiliates under tariffed rates in rows 8460 through 8499 and sold to affiliates under tariffed rates in rows 8510 through 8549, pursuant to Section 32.27(c)."

The instruction for column (f), Prevailing Market Price, is revised to read, "Enter the amount of assets purchased from affiliates at the prevailing market price in rows 8460 through 8499 and sold to affiliates at the prevailing market price in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c)."

The instruction for column (g), Total Purchases/Sales, is revised to read, "Enter the total of columns (c), (d), (e) and (f).

Table VI, Analysis of Services Purchased From or Sold To Affiliates:

Form:

Table VI is restructured to be Table VI with subheadings A and B for purchases and sales of services.

"(Dollars in thousands)" is added to the heading.

Classification column (a) is inserted. All other columns are relabeled accordingly.

N/As are inserted in column (a) rows 8570 through 8608 and and 8620 thr .gh 8658; and in column (b) rows 8609, 8610, 8659 and 8660.

The title From All Other is entered on row 8609.

The title of column (c) is changed to Fully Distributed Cost.

The title of column (f) is changed to Total Purchases/Sales.

Instructions:

The instruction for rows 8570 through 8608 is revised to read, "Each of these rows is provided for entry of data associated with the purchase of services from affiliates. Use one row for each affiliate, in descending order of the amount of purchases from each affiliate. Enter data in only those rows for which the reporting carrier has purchased services from an affiliate. If the carrier has purchased services from fewer than 38 affiliates, the remaining rows (including row 8609) may be left blank."

The instruction for rows 8620 through 8658 is revised to read, "Each of these rows is provided for entry of data associated with the sale of services to affiliates. Use one row for each affiliate, in descending order of the amount

of sales to each affiliate. Enter data in only those rows for which the reporting carrier has sold services to an affiliate. If the carrier has sold services to fewer than 38 affiliates, the remaining rows (including row 8659) may be left blank."

The instruction for column (b), Name of Affiliate, is revised to read, "Enter the name of the affiliates from whom services were purchased for $100,000 or more in rows 8570 through 8608 and to whom services were sold for $100,000 or more in rows 8620 through 8658."

The instruction for column (c), Fully Distributed Cost, is revised to read, "Enter the amount of services purchased from affiliates at fully distributed cost in rows 8570 through 8608 and the amount of services sold to affiliates at fully distributed cost in rows 8620 through 8658, pursuant to Section 32,27(d)."

The instruction for column (d), Tariff Rate, is revised to read, "Enter the amount of services purchased from affiliates under tariffed rates in rows 8570 through 8609 and the amount of services sold to affiliates under tariffed rates in rows 8620 through 8659, pursuant to Section 32.27(d)."

The instruction for column (e), Prevailing Market Price, is revised to read, "Enter the amount of services purchased from affiliates at the prevailing market price in rows 8570 through 8609 and the amount of services sold to affiliates at the prevailing market price in rows 8620 through 8659, pursuant to Section 32.27(d)."

The instruction for column (f), Total Purchases/Sales, is revised to read, The total of columns (c), (d) and (e).

Table VII, Net Deferred Income Taxes:

Form:

"(Dollars in thousands)" is added to the heading.

In column (c) Account, account number 7250 is inserted in rows 8672, 8682, 8702 and 8712; account number 7450 is entered in rows 8730, 8731, 8760, 8761 8800, 8801, 8830 and 8831; account number 7640 is entered in rows 8740, 8741, 8770, 8771, 8810, 8811, 8840 and 8841; N/As are entered in rows 8670, 8671, 8680, 8681, 8690, 8700, 8701, 8710, 8711, 8720, 8750, 8780, 8790, 8820, 8850 and 8860.

Instructions:

Row 6890 is renumbered with the appropriate number, 8690.

The instruction for column (c), Account, is eliminated because there are no data to be entered in this column.

The explanation of Adjustments is revised to read, "These columns reflect the total amount of debit or credit adjustments. Each adjustment of $100,000 or more must be explained in a footnote."

The instruction for column (f), debit, is revised to read, "Enter the total amount of debit adjustments."

The instruction for column (g), credit, is revised to read, "Enter the total amount of credit adjustments."

Table 8, Pension Cost:

Form:

"(Dollars in thousands)" is added to the heading.

Instructions:

The instruction for row 9105, Total, is revised to read, "The total of rows 9100 through 9104."

The instruction for row 9165, Total, is revised to read, "The total of rows 9160 through 9164."

43-08 (Operating Data Report)

Tables IX through XII are revised and are now Tables I.A through IV of FCC Report 43-08, the Operating Data Report.

Specific changes on each of these Tables are as follows:

Table I.A, Outside Plant Statistics-Cable and Wire Facilities:

Form:

The title of column (t) is changed to Km of Copper Wire in Non-Coaxial Cable. Columns (v), Km of System; (w), Km of Radio Channel; and (x), Km of Equivalent 4Khz and 6Kb/S Telephone Channel (subcolumns of the heading Radio Relay System); and columns (ab), Analog (4Khz or Equivalent); (ac), Digital (64Kb/S or Equivalent); and (ad), Video (subcolumns of the heading Total Equipped Circuit Km - Cable and Microwave Systems) are removed from Table I.A.

The columns are relabeled (a) through (x).

Instructions:

In the General Instructions and the Row Instructions, references to outside plant are changed to cable and wire facilities.

The instruction for the column descriptions is revised to read, "Each column represents a category of cable and wire facilities. In columns (d) through (q) a cable containing only copper, coaxial, or other metallic conductors should be classified as copper, but a cable containing both copper and fiber should be classified as fiber. In all columns include both local loop and interoffice facilities where applicable."

The instruction for column (t), Kilometers of Copper Wire in Non-Coaxial Cable, is revised to read, "The weighted sum of the number of copper wires in each non-coaxial cable multiplied by the associated sheath kilometers. The wires must be capable of supporting present or future telecommunications traffic."

Table I.B, Outside Plant Statistics-Other:

Form:

This table replaces the columns that are deleted from Table I.A.

Column (v) of proposed Table IX is retitled Kilometers of Terrestrial System. Proposed column (w) is replaced by two columns titled Kilometers of One-Way Terrestrial Radio Channel and Terrestrial Kilometers of One-Way Satellite Radio Channel. Proposed column (x) is replaced by two columns titled Kilometers of Analog Telephone Channel (4Khz or Equivalent) and Kilometers of Digital Telephone Channel (64Kb/Sec or Equivalent). Proposed columns (ab) through (ad) are replaced by three columns titled Analog, Digital and Video as subcolumns of retitled Total Equipped Local Loop Circuit Kilometers (Cable and Microwave Systems) and three columns titled Analog, Digital and Video as subcolumns of retitled Total Equipped Interoffice Circuit Kilometers (Cable and Microwave Systems). The columns are relabeled (ba) through (bm).

Instructions:

The instruction for the column descriptions is revised to read, "Each column represents a category of outside plant. In columns (bc) through (bg) include local loop and interoffice radio facilities where applicable. In columns (bh) through (bj) include local loop cable and microwave facilities. In columns (bk) through (bm) include interoffice cable and microwave facilities."

The instruction for columns (bc) through (bg) reads, "Equipment that is used to transmit and receive radio waves (above 890 mhz) through space over which communications channels are provided. In columns (bc) through (bg) report the aggregate number of kilometers of system or channel, as appropriate, between the individual stations or radio-relay systems. Include both local loop and interoffice facilities where applicable. If your radio repeater or terminal location interfaces with a radio facility in another company, only include the distance from your facility to the border of your company. If two of your interconnected radio repeaters or terminal locations form a radio path that

crosses the territory of another company, include the entire distance between the facilities."

The instruction for column (bc), Kilometers of Terrestrial System, is revised to read, "Total absolute distance between repeater sites making up microwave radio systems above 890 mhz. Do not include satellite systems in this total."

The instruction for columns (bd) through (be) reads, "Total kilometers of one-way radio channel above 890 mhz used for message, special services, video, or protection. A radio channel consists of a single one-way link using a microwave transmitter and receiver. The radio channel distance is the sum of the lengths of each one-way link associated with a transmitter-receiver pair. Where applicable, multiply the distance by 2 to account for two-way transmission."

The instruction for column (bd), Kilometers of One-Way Terrestrial Radio Channel, reads, "Total kilometers of one-way radio channel above 890 mhz used in terrestrial radio systems."

The instruction for column (be), Terrestrial Kilometers of One-Way Satellite Radio Channel, reads, "Total terrestrial kilometers of one-way radio channel above 890 mhz used in satellite radio systems, calculated as the terrestrial distance between the receiver and transmitter terminal locations."

The instruction for columns (bf) through (bg) reads, "Number of equivalent analog or digital telephone circuit kilometers that are equipped and on radio systems above 890 mhz."

The instruction for column (bf), Kilometers of Analog Telephone Channel (4Khz or Equivalent), reads, "Number of 4khz or equivalent analog telephone circuit kilometers that are equipped and on radio systems above 890 mhz. This value is the weighted sum of the number of equivalent analog circuits on each link times the length of the link."

The instruction for column (bg), Kilometers of Digital Telephone Channel (64Kb/Sec or Equivalent), reads, "Number of 64kb/sec or equivalent digital telephone circuit kilometers that are equipped and on radio systems above 890 mhz. This value is the weighted sum of the number of equivalent digital circuits on each link times the length of the link. In the case of radio systems carrying DS-1 channels for which DS-1 utilization is not known, calculate the weighted sum of the number of DS-1s on each link times the length of the link, round the result to the nearest whole kilometer, and multiply by 24."

The instruction for columns (bh) through (bj) reads, "Total equivalent telephone grade circuit kilometers in carrier local loop plant. Include both cable and microwave facilities."

The instruction for column (bh), Equipped Local Loop Analog (4Khz or Equivalent) Circuit Kilometers, reads, "Includes open wire, paired cable (K, N1, N2, N3, N4, ON, ON/K), microwave radio (TL, TM, TD2, TD3), and other analog microwave in carrier local loop plant. Report in equivalent 4khz circuit kilometers."

The instruction for column (bi), Equipped Local Loop Digital (64Kb/Sec or Equivalent) Circuit Kilometers, reads, "Includes lightguide (fiber) cables, digital subscriber paired cable (T1, T1C, T1D, T2), and microwave radio (DR11-40, other digital microwave) in carrier local loop plant. Report as equivalent 64kb/sec circuit kilometers. This may be calculated by summing unrounded DS-1 kilometers, rounding the total to the nearest kilometer, and weighting the result by 24."

The instruction for column (bj), Equipped Local Loop Video Circuit Kilometers, reads, "Kilometers of derived video channel in carrier local loop plant."

The instruction for columns (bk) through (bm) reads, "Total equivalent telephone grade circuit kilometers in interoffice carrier plant. Include both cable and microwave facilities."

The instruction for column (bk), Equipped Interoffice Analog (4Khz or Equivalent) Circuit Kilometers, reads, "Includes open wire, paired cable (K, N1, N2, N3, N4, ON, ON/K), microwave radio (TL, TM, TD2, TD3), and other analog microwave in interoffice carrier plant. Report in equivalent 4khz circuit kilometers."

The instruction for column (bl), Equipped Interoffice Digital (64Kb/Sec or Equivalent) Circuit Kilometers, reads, "Includes lightguide (fiber) cables, digital subscriber paired cable (T1, T1C, T1D, T2), and microwave radio (DR11-40, other digital microwave) in interoffice carrier plant. Report as equivalent 64kb/sec circuit kilometers. This may be calculated by summing unrounded DS-1 kilometers, rounding the total to the nearest kilometer, and weighting the result by 24."

The instruction for column (bm), Equipped Interoffice Video Circuit Kilometers, reads, "Kilometers of derived video channel in interoffice carrier plant."

Table II, Switched Access Lines in Service By Technology:

Form:

The columns are relabeled (ca) through (co).

Instructions:

The instruction for column (cf), Main Digital Access Lines (64Kb/Sec or Equivalent), is revised to read, "The 64kb/sec or 56kb/sec or ISDN B channels or other equivalent communications channels of digital subscriber lines as defined above that are circuit switched and can carry either voice or data. Do not include access lines connecting to a customer location PBX or Centrex."

The instruction for column (cg), Digital PBX and Centrex Access Trunks (64Kb/Sec or Equivalent), is revised to read, "The number of 64kb/sec or equivalent digital lines terminated on a customer location PBX and/or Centrex. Include Centrex-CU lines."

The instruction for column (ch), Digital Centrex Extensions (64Kb/Sec or Equivalent), is revised to read, "The number of 64kb/sec or equivalent digital circuits connecting a Centrex or PBX on telephone company premises to telephones on the customer's premises; service is provided by equipment on telephone company owned or leased space including ISDN based Centrex-CO Lines."

Table III, Access Lines in Service By Customer:

Form:

Proposed column (d) is replaced by two columns titled Analog Multi-Line Business Access Lines and Digital Business Access Lines. Proposed column (f) is replaced by two columns titled Analog Residential Access Lines and Digital Residential Access Lines. The columns are relabeled (da) through (dm).

Instructions:

The second paragraph of the General Instructions is revised to read, "In Table III columns (dc) through (dj), report access lines associated with switched services, i.e., all equivalent 4khz or 64kb/sec access lines included in Table II columns (cc) through (cj). Report special access lines that provide access to an interexchange carrier in Table III column (dk) or column (dl)."

The following sentence is deleted from the third paragraph of the General Instructions, "Do not include circuits that provide access to an interexchange carrier."

The instruction for columns (dc) through (de) is revised to read, "Total equivalent analog or digital switched access lines to business customers."

The instruction for column (dd), Analog Multi-Line Business Access Lines, reads, "Include the total of analog multi-line business CPTs subject to the multi-line business interstate subscriber line charge including multi-line semi-public lines, PBX trunks, Centrex-CU trunks, hotel/motel LD trunks and Centrex-CO lines ordered after July 27, 1983, and Centrex-CO and Centrex-CO

like lines in service or ordered as of July 27, 1983. Do not include in this column any equivalent 64kb/sec digital access lines reported in Table II."

The instruction for column (de), Digital Business Access Lines, reads, "Include in this column all equivalent 64kb/sec digital business access lines as reported in Table II."

The instruction for columns (dg) through (dh) reads, "Total equivalent analog or digital switched access lines to residential customers."

The instruction for column (dg), Analog Residential Access Lines, reads, "Total equivalent 4khz analog switched access lines to residential customers. Do not include in this column any equivalent 64kb/sec digital access lines reported in Table II."

The instruction for column (dh), Digital Residential Access Lines, reads, "Include in this column all equivalent 64kb/sec digital residential access lines as reported in Table II.

Table IV, Telephone Calls:

Form:

"(Amounts in Thousands)" is added to the heading.

Proposed column (c) of proposed Table XII is retitled Local Calls. Proposed column (d) is retitled IntraLATA Toll Calls Completed (Originating). Proposed columns (e), (g) and (i) are retitled Interstate, Intrastate and Total as subcolumns of retitled InterLATA Toll Calls Completed (Originating). Proposed columns (f), (h) and (j) are retitled Interstate, Intrastate and Total as subcolumns of retitled InterLATA Billed Access Minutes (Originating and Terminating). The columns are relabeled (ea) through (ej).

Instructions:

The second paragraph of the General Instructions is revised to read, "Toll call counts should be based on originating message volumes and should reflect completed calls. Where completed call data are unavailable, estimates may be reported (e.g., the numbers shown may be based on an actual count taken periodically during the year), but indicate the methodology and source data used in a footnote. Billed access minutes reflect originating and terminating access minutes billed to interexchange carriers, including call set-up time, holding time, and conversation time."

The word "completed" is deleted from the instruction for column (ec), Local Calls.

"The number of calls" is revised to read, "The number of completed calls" in the explanation for Toll Calls Completed.

The instruction for column (ed), IntraLATA Toll Calls Completed (Originating), is revised to read, "The number of completed toll calls carried by the reporting local operating company within a given Local Access and Transport Area (LATA). Include intraLATA-interstate and intraLATA-intrastate toll calls. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans, where applicable."

The instruction for columns (ee) through (eg) is revised to read, "Completed calls directed to and carried by interexchange carriers."

The instruction for column (ee), InterLATA-interstate Toll Calls Completed (Originating), is revised to read, "The number of completed interstate toll calls directed to and carried by interexchange carriers. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans. Calls should not be double counted at the originating and terminating ends."

The instruction for column (ef), InterLATA-intrastate Toll Calls Completed (Originating), is revised to read, "The number of completed intrastate toll calls directed to and carried by interexchange carriers. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans. Calls should not be double counted at the originating and terminating ends."

The instruction for columns (eh) through (ej) reads, "The number of interLATA access minutes based on bills sent to interexchange carriers. Include total originating and terminating access minutes of use. Where these data are unavailable, a statistically valid calculation may be made based on other data. Such a calculation must be footnoted with a description of the source data and methodology."

The instruction for column (eh), InterLATA-interstate Billed Access Minutes (Originating and Terminating), is revised to read, "The number of interLATA-interstate access minutes based on bills sent to interexchange carriers."

The instruction for column (ei), InterLATA-intrastate Billed Access Minutes (Originating and Terminating), is revised to read, "The number of interLATA-intrastate access minutes based on bills sent to interexchange carriers."

APPENDIX D

This document provides the instructions for FCC Report 43-02, the ARMIS USOA Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-02, the ARMIS USOA Report, to the Commission.

B. General Information

1. FCC Report 43-02 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues of $100 million or more.

2. Affected carriers shall file by April 1 of each year the report for the previous calendar year. The initial filing of this edition of the USOA Report will be filed by May of 1992 and will contain data for the calendar year 1991.

3. The report shall be filed on an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-02, which identifies the filing as the ARMIS USOA Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required operating company reports, a carrier submits a report which combines data for more than one operating company, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-02 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, Downtown Copy Center at 1114 21st Street, N.W., Washington, D.C. 20036 or delivered to Downtown Copy Center in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary 1919 M Street, N.W., Room 222 Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W., Room 812 Washington, D.C. 20554	1	1	1	1	1
FCC Common Carrier Bureau Industry Analysis Division 1250 23rd Street, N.W., Room 100 Washington, D. C. 20554	1	1	1	-	1
Downtown Copy Center 1919 M Street, N.W., Room 246 Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary 1919 M Street, N.W., Room 222 Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W., Room 812 Washington, D.C. 20554	1	1	1
FCC Common Carrier Bureau Industry Analysis Division 1250 23rd Street, N.W., Room 100 Washington, D.C. 20554	1	-	1
Downtown Copy Center 1919 M Street, N.W., Room 246 Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from the procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-02 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 64 of the attached Report Definition.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-02, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-02 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-02 may be obtained from the FCC's contractor for public records duplication, Downtown Copy Center at 1919 M Street, N.W., Room 246, Washington, D.C. 20036, Telephone (202) 452-1422.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/92

Estimated Average Burden Hours Per Response: 240 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-02, the ARMIS USOA Report, and lists the company level USOA data which must be provided annually. It contains the following:

	Pages
Table I - Balance Sheet Accounts	3 thru 5
Table II - Income Statement Accounts	6 thru 9
Table III - Statement of Cash Flows	10 thru 11
Table IV - Investments in Affiliates and Other Companies	12 thru 19
Table V - Analysis of Assets Purchased From or Sold To Affiliates	20 thru 21
Table VI - Analysis of Services Purchased From or Sold to Affiliates	22 thru 23
Table VII - Net Deferred Income Taxes	24 thru 26
Table VIII - Pension Cost	27 thru 30
Row and Column Descriptions	31 thru 65
Certification	66

All dollar amounts must be rounded to the nearest thousand dollars. All percentage amounts must be rounded to two places. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS USOA Report collects the operating results of the carriers' total activities for every account in the USOA, as specified in Part 32 of the Commission's Rules. This report also collects financial data concerning cash flows, affiliate transactions, deferred income taxes, and pension costs. The ARMIS USOA Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 240 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/92

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (a)	Amount (b)
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Inventories	
120	Total Noncash current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/92

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Beginning Balance (ab)	Additions (ac)	Retirements (ad)	Transfers/ Adjustments (ae)	Ending Balance (af)
	Plant					
2001	TPIS					
2002	PMFTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Telecom plant adjstmnt					
2006	Nonoperating plant					
2007	Goodwill					
210	Total Plant					
	TPIS - General Support					
2111	Land					
2112	Motor vehicles					
2113	Aircraft					
2114	Special purpose vehic					
2115	Garage work equipment					
2116	Other work equipment					
2121	Buildings					
2122	Furniture					
2123	Office Equipment					
2124	Gen purpose computers					
2110	Land & Support					
	TPIS - Central Office					
2211	Analog elec switch					
2212	Digit elec switch					
2215.1	Step-by-step switching					
2215.2	Crossbar switching					
2215.3	Other elec-mechan sw					
2215	Electro-mechan sw					
2210	Cen Office-Sw					
2220	Operator sys					
2231.1	Satellite & earth sta					
2231.2	Other radio facilities					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	TPIS - IOT					
2311	Station apparatus					
2321	Customer premise wire					
2341	Large PBX					
2351	Publ tel trmnal equip					
2362	Other terminal equip					
2310	IOT					
	TPIS - Cable & Wire					
2411	Poles					
2421	Aerial cable					
2422	Underground cable					
2423	Buried cable					
2424	Submarine cable					
2425	Deep sea cable					
2426	Intrabldg network cble					
2431	Aerial wire					
2441	Conduit systems					
2410	Cable & Wire					
	TPIS - Amortiz Assets					
2681	Capital Leases					
2682	Leasehold improvements					
2680	Amort Tangible					
2690	Intangibles					
260	Total TPIS					

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/92

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHFTU	
3300	Accumulated depreciation - Nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvements	
3400	Accumulated amortization - Tangible	
3500	Accumulated amortization - Intangible	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts Payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long-term debt	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	
	Long-Term Debt	
4210	Funded debt	
4220	Premium on long-term debt	
4230	Discount on long-term debt	
4240	Reacquired debt	
4250	Obligations under capital leases	
4260	Advances from affiliated companies	
4270	Other long-term debt	
420	Total Long-Term Debt	
	Other Liabilities and Deferred Credits	
4310	Other long-term liabilities	
4320	Unamortized operating investment tax credits - net	
4330	Unamortized nonoperating investment tax crs - net	
4340	Net noncurrent deferred operating income taxes	
4350	Net noncurrent deferred nonoperating income taxes	
4360	Other deferred credits	
4370	Other jurisdictional liabilities/deferred crs - net	
430	Total Other Liabilities and Deferred Credits	
	Stockholders' Equity	
4510	Capital stock	
4520	Additional paid-in capital	
4530	Treasury stock	
4540	Other Capital	
4550	Retained earnings	
440	Total Stockholders' Equity	
450	Total Liabilities & Stockholders' Equity	
460	Retained Earnings (Beginning of Year)	
465	Net Income	
470	Dividends Declared	
475	Miscellaneous Debits	
480	Miscellaneous Credits	
490	Retained Earnings (End of Year)	

FCC REPORT 43-02
ARMIS USOA REPORT

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3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (a)	Amount (b)
	REVENUE ACCOUNTS	
	Local Network Service Revenues	
5001	Basic area revenue	
5002	Optional extended area revenue	
5003	Cellular mobile service revenue	
5004	Other mobile service revenue	
510	Basic local service rev (Class A Account 5000)	
5010	Public telephone revenue	
5040	Local private line revenue	
5050	Customer premises revenue	
5060	Other local exchange revenue	
5069	Other local exchange revenue settlements	
520	Basic local service revenue	
	Network Access Services Revenues	
5081	End user revenue	
5082	Switched access revenue	
5083	Special access revenue	
5084	State access revenue	
5080	Network access revenue	
	Long Distance (LD) Network Services Revenues	
5100	LD Message Revenue (Class A)	
5111	LD inward-only revenue	
5112	LD outward-only revenue	
5110	Unidirectional LD Revenue	
5121	Subvoice grade LD private network revenue	
5122	Voice grade LD private network revenue	
5123	Audio program grade LD private network revenue	
5124	Video program grade LD private network revenue	
5125	Digital transmission LD private network revenue	
5126	LD private network switching revenue	
5128	Other LD private network revenue	
5129	Other LD private network revenue settlements	
5120	Long distance private network revenue	
5160	Other long distance revenue	
5169	Other long distance revenue settlements	
525	LD Network Services Revenues	
	Miscellaneous Revenues	
5230	Directory revenue	
5240	Rent revenue	
5250	Corporate operations revenue	
5261	Special billing arrangements revenue	
5262	Customer operations revenue	
5263	Plant operations revenue	
5264	Other incidental regulated revenue	
5269	Other revenue settlements	
5260	Miscellaneous revenues (Class A)	
5270	Carrier billing and collection revenue	
5280	Nonregulated revenue	
5200	Miscellaneous revenues	
	Uncollectible Revenues	
5301	Uncollectible revenue-telecommunications	
5302	Uncollectible revenue-other	
5300	Uncollectible revenue	
530	Total Operating Revenues	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
	EXPENSE ACCOUNTS					
	Plant Specific Ops					
6112	Motor vehicle					
610	Clearance - MV					
615	Net Balance - MV					
6113	Aircraft					
620	Clearance - Aircr					
625	Net Balance - Aircr					
6114	Special purpose vehicle					
630	Clearance - SPV					
635	Net Balance - SPV					
6115	Garage work equipment					
6116	Other work equipment					
640	Clearance - OWE					
645	Net Balance - OWE					
6110	Network support					
6121	Land & building					
6122	Furniture & artworks					
6123	Office equipment					
6124	Gen purpose computers					
6120	General support					
6211	Analog electronic					
6212	Digital electronic					
6215	Electro-mechanical					
6210	Cntrl Office Sw					
6220	Operator systems					
6231	Radio systems					
6232	Circuit equipment					
6230	Cntrl office Tr					
6311	Station apparatus					
6341	Large PBX					
6351	Public tel tmnl equip					
6362	Other terminal equip					
6310	IOT expense					
6411	Poles					
6421	Aerial cable					
6422	Underground cable					
6423	Buried cable					
6424	Submarine cable					
6425	Deep sea cable					
6426	Intrabldg network cable					
6431	Aerial wire					
6441	Conduit systems					
6410	Cable & Wire					
650	Total Plant Ops					
	Plant Nonspecific Ops					
6511	PMTU				N/A	
6512	Provisioning				N/A	
660	Clearance - Prov				N/A	
665	Net Balance - Prov				N/A	
6510	Other PP&E Exp				N/A	
6531	Power				N/A	
6532	Network administration				N/A	
6533	Testing				N/A	
6534	Plant ops admin				N/A	
670	Clearance - POA				N/A	
675	Net Balance - POA				N/A	
6535	Engineering				N/A	
680	Clearance - Eng				N/A	
685	Net Balance - Eng				N/A	
6530	Network Ops				N/A	
6540	Access				N/A	
6561	Depreciation-TPIS		N/A	N/A	N/A	
6562	Depreciation-PMTU		N/A	N/A	N/A	
6563	Amortization-tangible		N/A	N/A	N/A	
6564	Amortization-intangible		N/A	N/A	N/A	
6565	Amortization-other		N/A	N/A	N/A	
6560	Dep & Amort Exp		N/A	N/A	N/A	
690	Total Plant Non				N/A	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
	Customer Operations					
6611	Product management				N/A	
6612	Sales				N/A	
6613	Product Advertising				N/A	
6610	Marketing Expense				N/A	
6621	Call Completion				N/A	
6622	Number Services				N/A	
6623	Customer Services				N/A	
6620	Services Expense				N/A	
700	Total Cust Ops				N/A	
	Corporate Operations					
6711	Executive				N/A	
6712	Planning				N/A	
6710	Exec & Planning				N/A	
6721	Accounting & finance				N/A	
6722	External relations				N/A	
6723	Human resources				N/A	
6724	Information management				N/A	
6725	Legal				N/A	
6726	Procurement				N/A	
6727	Research & development				N/A	
6728	Other general & admin				N/A	
6720	General & Admin				N/A	
6790	Provis uncollect notes		N/A	N/A	N/A	
710	Total Corp Ops				N/A	
720	Total Ops Exp					
730	Net Ops Rev		N/A	N/A	N/A	N/A

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
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TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Other Operating Income and Expense	
7110	Income from custom work	
7130	Return from nonreg use of regulated facilities	
7140	Gains/losses from foreign exchange	
7150	Gains/losses from disposition of land & artworks	
7160	Other operating gains and losses	
7100	Other operating income and expenses	
	Operating Taxes	
7210	Operating investment tax credits-net	
7220	Operating federal income taxes	
7230	Operating state and local income taxes	
7240	Operating other taxes	
7250	Provision for deferred operating income tax-net	
7200	Operating Taxes	
	Nonoperating Income and Expense	
7310	Dividend income	
7320	Interest income	
7330	Income from sinking and other funds	
7340	Allowance for funds used during construction(AFUDC)	
7350	Gains/losses from the disposition of property	
7360	Other nonoperating income	
7370	Special charges	
7300	Nonoperating Income and Expense	
	Nonoperating Taxes	
7410	Nonoperating investment tax credits-net	
7420	Nonoperating federal income taxes	
7430	Nonoperating state and local income taxes	
7440	Nonoperating other taxes	
7450	Provision for deferred nonoperating income tax-net	
7400	Nonoperating Taxes	
	Interest and Related Items	
7510	Interest on funded debt	
7520	Interest expense-capital leases	
7530	Amortization of debt issuance expense	
7540	Other interest deductions	
7500	Interest and Related Items	
	Extraordinary Items	
7610	Extraordinary income credits	
7620	Extraordinary income charges	
7630	Current inc tax effect of extraordinary items-net	
7640	Provision for deferred inc tax effect of items-net	
7600	Extraordinary Items	
	Jurisdictional Differences & Nonregulated Income	
7910	Income effects of jurisdictional differences-net	
7990	Nonregulated net income	
790	Net Income	

TABLE III - STATEMENT OF CASH FLOWS
(Dollars in thousands)

Row No.	Description (a)	Amount (b)	Amount (c)
	INCREASE/DECREASE IN CASH AND CASH EQUIVALENTS:		
	Cash Flows From Operating Activities:		
8000	Net Income/Loss	N/A	
	Adjustments to Reconcile Net Income to Net Cash Provided by Operating Activities:		
8010	Depreciation and Amortization		N/A
8020	Provision for Losses for Accounts Receivables		N/A
8030	Deferred Income Taxes - Net		N/A
8040	Unamortized ITC - Net		N/A
8050	Allowance for Funds Used During Construction		N/A
8060	Net Change in Operating Receivables		N/A
8070	Net Change in Materials, Supplies & Inventories		N/A
8080	Net Change in Operating Payables & Accrued Liabilities		N/A
8090	Net Change in Other Assets and Deferred Charges		N/A
8100	Net Change in Other Liabilities and Deferred Credits		N/A
8110	Other		N/A
8120	Total Adjustments	N/A	
8130	Net Cash Provided by/Used in Operating Activities	N/A	
	Cash Inflows/Outflows from Investing Activities:		
8140	Construction/Acquisition of Property, Plant and Equipment		N/A
8150	Proceeds from Disposals of Property, Plant and Equipment		N/A
8160	Investments in & Advances to Affiliates		N/A
8170	Proceeds from Repayment of Advances		N/A
8180	Other Investing Activities		N/A
8190	Net Cash Provided by/Used in Investment Activities	N/A	

TABLE III - STATEMENT OF CASH FLOWS
(Dollars in thousands)

Row No.	Description (a)	Amount (b)	Amount (c)
	Cash Flows from Financing Activities:		
8200	Net Increase/Decrease in Short-Term Debt		N/A
8210	Advances from Affiliates		N/A
8220	Repayment of Advances from Affiliates		N/A
8230	Proceeds from Long-Term Debt		N/A
8240	Repayment of Long-Term Debt		N/A
8250	Payment of Capital Lease Obligations		N/A
8260	Proceeds from Issue of Common/Equity Investment from Parent		N/A
8270	Repurchase of Treasury Shares		N/A
8280	Dividends Paid		N/A
8290	Other Financing Activities		N/A
8300	Net Cash Provided by Financing Activities	N/A	
8310	Effect of Exchange Rate Changes on Cash	N/A	
8320	Net Increase/Decrease in Cash and Cash Equivalents	N/A	
8330	Cash & Cash Equivalents-Beginning of Period	N/A	
8340	Cash & Cash Equivalents-End of Period	N/A	

TABLE IV.A - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Company Name (b)	Account 1401/1402 Common (c)	Preferred (d)	Advances (e)	LT Debt (f)	Adjustments (g)	Net (h)
	AFFILIATED COMPANIES							
	Equity Method:							
8350	N/A							
8351	N/A							
8352	N/A							
8353	N/A							
8354	N/A							
8355	N/A							
8356	N/A							
8357	N/A							
8358	N/A							
8359	N/A							
8360	N/A							
8361	N/A							
8362	N/A							
8363	N/A							
8364	N/A							
8365	N/A							
8366	N/A							
8367	N/A							
8368	N/A							
8369	N/A							
8370	N/A							
8371	N/A							
8372	N/A							
8373	N/A							
8374	N/A							
8375	N/A							
8376	N/A							
8377	N/A							
8378	N/A							
8379	All Others	N/A						
8380	Total-Equity Method	N/A						

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TABLE IV.A - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Account 1160 Beg Balance (i)	Gross Dr (j)	Gross Cr (k)	Net (l)	Account 1180 Beg Balance (m)	Gross Dr (n)	Gross Cr (o)	Net (p)
	AFFILIATED COMPANIES								
	Equity Method:								
8350	N/A								
8351	N/A								
8352	N/A								
8353	N/A								
8354	N/A								
8355	N/A								
8356	N/A								
8357	N/A								
8358	N/A								
8359	N/A								
8360	N/A								
8361	N/A								
8362	N/A								
8363	N/A								
8364	N/A								
8365	N/A								
8366	N/A								
8367	N/A								
8368	N/A								
8369	N/A								
8370	N/A								
8371	N/A								
8372	N/A								
8373	N/A								
8374	N/A								
8375	N/A								
8376	N/A								
8377	N/A								
8378	N/A								
8379	All Others								
8380	Total-Equity Methd								

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE IV.A - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Company Name (b)	Account 1401/1402 Common (c)	Preferred (d)	Advances (e)	LT Debt (f)	Adjustments (g)	Net (h)
	AFFILIATED COMPANIES							
	Cost Method:							
8390	N/A							
8391	N/A							
8392	N/A							
8393	N/A							
8394	N/A							
8395	N/A							
8396	N/A							
8397	N/A							
8398	N/A							
8399	N/A							
8400	N/A							
8401	N/A							
8402	N/A							
8403	N/A							
8404	N/A							
8405	N/A							
8406	N/A							
8407	N/A							
8408	N/A							
8409	N/A							
8410	N/A							
8411	N/A							
8412	N/A							
8413	N/A							
8414	N/A							
8415	N/A							
8416	N/A							
8417	N/A							
8418	N/A							
8419	All Others	N/A						
8420	Total-Cost Method	N/A						
8430	Total Affiliates	N/A						
8440	Non-Affiliates	N/A						
8450	Total Investment	N/A						

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STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE IV.A - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Account 1160 Beg Balance (i)	Gross Dr (j)	Gross Cr (k)	Net (l)	Account 1180 Beg Balance (m)	Gross Dr (n)	Gross Cr (o)	Net (p)
	AFFILIATED COMPANIES								
	Cost Method:								
8390	N/A								
8391	N/A								
8392	N/A								
8393	N/A								
8394	N/A								
8395	N/A								
8396	N/A								
8397	N/A								
8398	N/A								
8399	N/A								
8400	N/A								
8401	N/A								
8402	N/A								
8403	N/A								
8404	N/A								
8405	N/A								
8406	N/A								
8407	N/A								
8408	N/A								
8409	N/A								
8410	N/A								
8411	N/A								
8412	N/A								
8413	N/A								
8414	N/A								
8415	N/A								
8416	N/A								
8417	N/A								
8418	N/A								
8419	All Others								
8420	Total-Cost Method								
8430	Total Affiliates								
8440	Non-Affiliates								
8450	Total Investment								

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STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE IV.B - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Company Name (b)	Account 1190 Beg Balance (c)	Gross Dr (d)	Gross Cr (e)	Net (f)
AFFILIATED COMPANIES						
Equity Method:						
9350	N/A					
9351	N/A					
9352	N/A					
9353	N/A					
9354	N/A					
9355	N/A					
9356	N/A					
9357	N/A					
9358	N/A					
9359	N/A					
9360	N/A					
9361	N/A					
9362	N/A					
9363	N/A					
9364	N/A					
9365	N/A					
9366	N/A					
9367	N/A					
9368	N/A					
9369	N/A					
9370	N/A					
9371	N/A					
9372	N/A					
9373	N/A					
9374	N/A					
9375	N/A					
9376	N/A					
9377	N/A					
9378	N/A					
9379	All Others					
9380	Total-Equity Methd					

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STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE IV.B - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Account 1200 BegBalance (g)	Gross Dr (h)	Gross Cr (i)	Net (j)	Account 1210 BegBalance (k)	Gross Dr (l)	Gross Cr (m)	Net (n)	Total (o)
	AFFILIATED COMPANIES									
	Equity Method:									
9350	N/A									
9351	N/A									
9352	N/A									
9353	N/A									
9354	N/A									
9355	N/A									
9356	N/A									
9357	N/A									
9358	N/A									
9359	N/A									
9360	N/A									
9361	N/A									
9362	N/A									
9363	N/A									
9364	N/A									
9365	N/A									
9366	N/A									
9367	N/A									
9368	N/A									
9369	N/A									
9370	N/A									
9371	N/A									
9372	N/A									
9373	N/A									
9374	N/A									
9375	N/A									
9376	N/A									
9377	N/A									
9378	N/A									
9379	All Other									
9380	Total-Equity Methd									

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TABLE IV.B

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
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COSA: xxxx

TABLE IV.B - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Company Name (b)	Account 1190 Beg Balance (c)	Gross Dr (d)	Gross Cr (e)	Net (f)
	AFFILIATED COMPANIES					
	Cost Method:					
9390	N/A					
9391	N/A					
9392	N/A					
9393	N/A					
9394	N/A					
9395	N/A					
9396	N/A					
9397	N/A					
9398	N/A					
9399	N/A					
9400	N/A					
9401	N/A					
9402	N/A					
9403	N/A					
9404	N/A					
9405	N/A					
9406	N/A					
9407	N/A					
9408	N/A					
9409	N/A					
9410	N/A					
9411	N/A					
9412	N/A					
9413	N/A					
9414	N/A					
9415	N/A					
9416	N/A					
9417	N/A					
9418	N/A					
9419	All Others					
9420	Total-Cost Method					
9430	Total Affiliates					
9440	Non-Affiliates					
9450	Total Investment					

TABLE IV.B - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES
(Dollars in thousands)

Row No.	Classification (a)	Account 1200 BegBalance (g)	Gross Dr (h)	Gross Cr (i)	Net (j)	Account 1210 BegBalance (k)	Gross Dr (l)	Gross Cr (m)	Net (n)	Total (o)
	AFFILIATED COMPANIES									
	Cost Method:									
9390	N/A									
9391	N/A									
9392	N/A									
9393	N/A									
9394	N/A									
9395	N/A									
9396	N/A									
9397	N/A									
9398	N/A									
9399	N/A									
9400	N/A									
9401	N/A									
9402	N/A									
9403	N/A									
9404	N/A									
9405	N/A									
9406	N/A									
9407	N/A									
9408	N/A									
9409	N/A									
9410	N/A									
9411	N/A									
9412	N/A									
9413	N/A									
9414	N/A									
9415	N/A									
9416	N/A									
9417	N/A									
9418	N/A									
9419	All Other									
9420	Total-Cost Method									
9430	Total Affiliates									
9440	Non-Affiliates									
9450	Total Investment									

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmmm yyyy To mmmm yyyy TABLE V
COSA: xxxx

TABLE V - ANALYSIS OF ASSETS PURCHASED FROM OR SOLD TO AFFILIATES
(Dollars in Thousands)

Row No.	Classification (a)	Name of Affiliate (b)	Net Book Cost (c)	Fair Market Value (d)	Tariff (e)	Prevailing Markt Price (f)	Total Purch/Sales (g)
A. ANALYSIS OF ASSETS PURCHASED FROM AFFILIATES							
8460	N/A						
8461	N/A						
8462	N/A						
8463	N/A						
8464	N/A						
8465	N/A						
8466	N/A						
8467	N/A						
8468	N/A						
8469	N/A						
8470	N/A						
8471	N/A						
8472	N/A						
8473	N/A						
8474	N/A						
8475	N/A						
8476	N/A						
8477	N/A						
8478	N/A						
8479	N/A						
8480	N/A						
8481	N/A						
8482	N/A						
8483	N/A						
8484	N/A						
8485	N/A						
8486	N/A						
8487	N/A						
8488	N/A						
8489	N/A						
8490	N/A						
8491	N/A						
8492	N/A						
8493	N/A						
8494	N/A						
8495	N/A						
8496	N/A						
8497	N/A						
8498	N/A						
8499	From All Other	N/A					
8500	Total Purchase	N/A					

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COSA: xxxx

TABLE V - ANALYSIS OF ASSETS PURCHASED FROM OR SOLD TO AFFILIATES
(Dollars in Thousands)

Row No.	Classification (a)	Name of Affiliate (b)	Net Book Cost (c)	Fair Market Value (d)	Tariff (e)	Prevailing Markt Price (f)	Total Purch/Sales (g)
B. ANALYSIS OF ASSETS SOLD TO AFFILIATES							
8510	N/A						
8511	N/A						
8512	N/A						
8513	N/A						
8514	N/A						
8515	N/A						
8516	N/A						
8517	N/A						
8518	N/A						
8519	N/A						
8520	N/A						
8521	N/A						
8522	N/A						
8523	N/A						
8524	N/A						
8525	N/A						
8526	N/A						
8527	N/A						
8528	N/A						
8529	N/A						
8530	N/A						
8531	N/A						
8532	N/A						
8533	N/A						
8534	N/A						
8535	N/A						
8536	N/A						
8537	N/A						
8538	N/A						
8539	N/A						
8540	N/A						
8541	N/A						
8542	N/A						
8543	N/A						
8544	N/A						
8545	N/A						
8546	N/A						
8547	N/A						
8548	N/A						
8549	To All Other	N/A					
8550	Total Sales	N/A					

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
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TABLE VI - ANALYSIS OF SERVICES PURCHASED FROM OR SOLD TO AFFILIATES
(Dollars in thousands)

Row No.	Classification (a)	Name of Affiliate (b)	Fully Distributed Cost (c)	Tariff Rate (d)	Prevailing Markt Price (e)	Total Purch/Sales (f)
A. ANALYSIS OF PURCHASES FROM AFFILIATES:						
8570	N/A					
8571	N/A					
8572	N/A					
8573	N/A					
8574	N/A					
8575	N/A					
8576	N/A					
8577	N/A					
8578	N/A					
8579	N/A					
8580	N/A					
8581	N/A					
8582	N/A					
8583	N/A					
8584	N/A					
8585	N/A					
8586	N/A					
8587	N/A					
8588	N/A					
8589	N/A					
8590	N/A					
8591	N/A					
8592	N/A					
8593	N/A					
8594	N/A					
8595	N/A					
8596	N/A					
8597	N/A					
8598	N/A					
8599	N/A					
8600	N/A					
8601	N/A					
8602	N/A					
8603	N/A					
8604	N/A					
8605	N/A					
8606	N/A					
8607	N/A					
8608	N/A					
8609	From All Other	N/A				
8610	Total Purchase	N/A				

TABLE VI - ANALYSIS OF SERVICES PURCHASED FROM OR SOLD TO AFFILIATES
(Dollars in thousands)

Row No.	Classification (a)	Name of Affiliate (b)	Fully Distributed Cost (c)	Tariff Rate (d)	Prevailing Markt Price (e)	Total Purch/Sales (f)
B. ANALYSIS OF SALES TO AFFILIATES:						
8620	N/A					
8621	N/A					
8622	N/A					
8623	N/A					
8624	N/A					
8625	N/A					
8626	N/A					
8627	N/A					
8628	N/A					
8629	N/A					
8630	N/A					
8631	N/A					
8632	N/A					
8633	N/A					
8634	N/A					
8635	N/A					
8636	N/A					
8637	N/A					
8638	N/A					
8639	N/A					
8640	N/A					
8641	N/A					
8642	N/A					
8643	N/A					
8644	N/A					
8645	N/A					
8646	N/A					
8647	N/A					
8648	N/A					
8649	N/A					
8650	N/A					
8651	N/A					
8652	N/A					
8603	N/A					
8654	N/A					
8655	N/A					
8656	N/A					
8657	N/A					
8658	N/A					
8659	From All Other	N/A				
8660	Total Sales	N/A				

TABLE VII - NET DEFERRED INCOME TAXES
(Dollars in thousands)

Row No.	Particulars (a)	Beg Balance (b)	Account (c)	Current Yr Accrual (d)	Current Yr Amortize (e)	Adjustments Debit (f)	Adjustments Credit (g)	End of Year Balance (h)
	NET DEFERRED OPERATING INCOME TAXES - ACCOUNTS 4100 AND 4340:							
	Property Related:							
	Net Current Deferred Operating Income Taxes (Account 4100)							
	Provision for Deferred Operating Income Taxes - Net							
8670	Federal Income Taxes		N/A					
8671	State and Local Income Taxes		N/A					
8672	Total Net Current Op Inc Taxes		7250					
	Net Noncurrent Deferred Operating Income Taxes (Account 4340)							
	Provision for Deferred Operating Income Taxes - Net							
8680	Federal Income Taxes		N/A					
8681	State and Local Income Taxes		N/A					
8682	Total Net Noncurr Op Inc Taxes		7250					
8690	Tot Prop Rel Def Op Inc Taxes		N/A					
	Nonproperty Related:							
	Net Current Deferred Operating Income Taxes (Account 4100)							
	Provision for Deferred Operating Income Taxes - Net							
8700	Federal Income Taxes		N/A					
8701	State and Local Income Taxes		N/A					
8702	Total Net Current Op Inc Taxes		7250					
	Net Noncurrent Deferred Operating Income Taxes (Account 4340)							
	Provision for Deferred Operating Income Taxes - Net							
8710	Federal Income Taxes		N/A					
8711	State and Local Income Taxes		N/A					
8712	Total Net Noncurr Op Inc Taxes		7250					
8720	Tot Nonprop Rel Def Op Inc Tax		N/A					

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TABLE VII - NET DEFERRED INCOME TAXES
(Dollars in thousands)

Row No.	Particulars (a)	Beg Balance (b)	Account (c)	Current Yr Accrual (d)	Current Yr Amortize (e)	Adjustments Debit (f)	Adjustments Credit (g)	End of Year Balance (h)
	NET DEFERRED NONOPERATING INCOME TAXES - ACCOUNTS 4110 AND 4350:							
	Property Related:							
	Net Current Deferred Nonoperating Income Taxes (Account 4110)							
	Provision for Deferred Nonoperating Income Taxes - Net							
8730	Federal Income Taxes		7450					
8731	State and Local Income Taxes		7450					
	Deferred Income Tax Effect of Extraordinary Items - Net							
8740	Federal Income Taxes		7640					
8741	State and Local Income Taxes		7640					
8750	Tot Net Current Nonop Inc Txs		N/A					
	Net Noncurrent Deferred Nonoperating Income Taxes (Account 4350)							
	Provision for Deferred Nonoperating Income Taxes - Net							
8760	Federal Income Taxes		7450					
8761	State and Local Income Taxes		7450					
	Deferred Income Tax Effect of Extraordinary Items - Net							
8770	Federal Income Taxes		7640					
8771	State and Local Income Taxes		7640					
8780	Total Net NonCurr Nonop Inc Tx		N/A					
8790	Tot Prop Rel Def Nonop Inc Txs		N/A					

TABLE VII - NET DEFERRED INCOME TAXES
(Dollars in thousands)

Row No.	Particulars (a)	Beg Balance (b)	Account (c)	Current Yr Accrual (d)	Current Yr Amortize (e)	Adjustments Debit (f)	Adjustments Credit (g)	End of Year Balance (h)
	NET DEFERRED NONOPERATING INCOME TAXES - ACCOUNTS 4110 AND 4350 (cont):							
	Nonproperty Related:							
	Net Current Deferred Nonoperating Income Taxes (Account 4110)							
	Provision for Deferred Nonoperating Income Taxes - Net							
8800	Federal Income Taxes		7450					
8801	State and Local Income Taxes		7450					
	Deferred Income Tax Effect of Extraordinary Items - Net							
8810	Federal Income Taxes		7640					
8811	State and Local Income Taxes		7640					
8820	Tot Net Current Nonop Inc Txs		N/A					
	Net Noncurrent Deferred Nonoperating Income Taxes (Account 4350)							
	Provision for Deferred Nonoperating Income Taxes - Net							
8830	Federal Income Taxes		7450					
8831	State and Local Income Taxes		7450					
	Deferred Income Tax Effect of Extraordinary Items - Net							
8840	Federal Income Taxes		7640					
8841	State and Local Income Taxes		7640					
8850	Tot Net Noncurr Nonop Inc Txs		N/A					
8860	Tot Nonpro Rel Def Nonop In Tx		N/A					

TABLE VIII - PENSION COST
(Dollars in thousands)

Row No.	Description (a)	Amount Current Year (b)	Amount Previous Year (c)
	MANAGEMENT PLAN DATA:		
8870	Accumulated Benefit Obligation		
8871	Projected Benefit Obligation		
8872	Fair Value of Plan Assets		
8873	Discount Rate for Settlement of Liabilities		
8874	Expected Long Term Return on Assets		
	Net Periodic Pension Cost:		
8880	Service Cost		
8881	Interest Cost		
8882	Return on Plan Assets		
8883	Amortization of Transition Amount		
8884	Amortization of Gains or Losses		
8885	Total		
8890	Number of Active Employees		
8891	Number of Retired Employees		
	REPORTING COMPANY:		
9000	Minimum Required Contribution		
9001	Actual Contribution		
9002	Maximum Amount Deductible		
9003	Benefit Payments		
9010	Pension Cost		
9011	Pension Cost Capitalized		
9012	Accumulated Pension Asset/Liability-End of Yr		
9020	Number of Active Employees		
9021	Number of Retired Employees		

TABLE VIII - PENSION COST
(Dollars in thousands)

Row No.	Description (a)	Amount Current Year (b)	Amount Previous Year (c)
	NON-MANAGEMENT PLAN DATA:		
9030	Accumulated Benefit Obligation		
9031	Projected Benefit Obligation		
9032	Fair Value of Plan Assets		
9033	Discount Rate for Settlement of Liabilities		
9034	Expected Long Term Return on Assets		
	Net Periodic Pension Cost:		
9040	Service Cost		
9041	Interest Cost		
9042	Return on Plan Assets		
9043	Amortization of Transition Amount		
9044	Amortization of Gains or Losses		
9045	Total		
9050	Number of Active Employees		
9051	Number of Retired Employees		
	REPORTING COMPANY:		
9060	Minimum Required Contribution		
9061	Actual Contribution		
9062	Maximum Amount Deductible		
9063	Benefit Payments		
9070	Pension Cost		
9071	Pension Cost Capitalized		
9072	Accumulated Pension Asset/Liability-End of Yr		
9080	Number of Active Employees		
9081	Number of Retired Employees		

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TABLE VIII - PENSION COST
(Dollars in thousands)

Row No.	Description (a)	Amount Current Year (b)	Amount Previous Year (c)
	ALTERNATIVE MANAGEMENT PLAN DATA:		
9090	Accumulated Benefit Obligation		
9091	Projected Benefit Obligation		
9092	Fair Value of Plan Assets		
9093	Discount Rate for Settlement of Liabilities		
9094	Expected Long Term Return on Assets		
	Net Periodic Pension Cost:		
9100	Service Cost		
9101	Interest Cost		
9102	Return on Plan Assets		
9103	Amortization of Transition Amount		
9104	Amortization of Gains or Losses		
9105	Total		
9110	Number of Active Employees		
9111	Number of Retired Employees		
	REPORTING COMPANY:		
9120	Minimum Required Contribution		
9121	Actual Contribution		
9122	Maximum Amount Deductible		
9123	Benefit Payments		
9130	Pension Cost		
9131	Pension Cost Capitalized		
9132	Accumulated Pension Asset/Liability-End of Yr		
9140	Number of Active Employees		
9141	Number of Retired Employees		

TABLE VIII - PENSION COST
(Dollars in thousands)

Row No.	Description (a)	Amount Current Year (b)	Amount Previous Year (c)
	ALTERNATIVE NON-MANAGEMENT PLAN DATA:		
9150	Accumulated Benefit Obligation		
9151	Projected Benefit Obligation		
9152	Fair Value of Plan Assets		
9153	Discount Rate for Settlement of Liabilities		
9154	Expected Long Term Return on Assets		
	Net Periodic Pension Cost:		
9160	Service Cost		
9161	Interest Cost		
9162	Return on Plan Assets		
9163	Amortization of Transition Amount		
9164	Amortization of Gains or Losses		
9165	Total		
9170	Number of Active Employees		
9171	Number of Retired Employees		
	REPORTING COMPANY:		
9180	Minimum Required Contribution		
9181	Actual Contribution		
9182	Maximum Amount Deductible		
9183	Benefit Payments		
9190	Pension Cost		
9191	Pension Cost Capitalized		
9192	Accumulated Pension Asset/Liability-End of Yr		
9200	Number of Active Employees		
9201	Number of Retired Employees		

TABLES I AND II - ROW INSTRUCTIONS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations or need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise indicated, three digit row numbers indicate that there is no comparable Part 32 account.

TABLE I - BALANCE SHEET ACCOUNTS

1120. Cash and Equivalents - For Class A companies this amount equals the total of Row/Account 1130 through 1160. For Class B companies this amount equals the balance of account 1120.

120. Total Noncash Current (excluding prepayments) - This amount equals the total of Row/Account 1180 + 1190 + 1200 + 1210 + 1220 - 1181 -1191 - 1201.

1280. Prepayments - For Class A companies this amount equals the total of Row/Account 1290 through 1330. For Class B companies this amount equals the balance of account 1280.

130. Total Current Assets - This amount equals the total of Row/Account 1120, 120, 1280 and 1350.

150. Total Noncurrent Assets - This amount equals the total of Row/Account 1401 through 1500.

210. Total Plant - This amount equals the total of Row/Account 2001 through 2007.

2110. Land and Support - For Class A companies this amount equals the total of Row/Account 2111 through 2124. For Class B companies this amount equals the balance of account 2110.

2215. Electro-mechanical Switching - This amount equals the total of Row/Account 2215.1 through 2215.3.

2210. Central Office - Switching - For Class A companies this amount equals the total of Row/Account 2211, 2212 and 2215. For Class B companies this amount equals the balance of account 2210.

2231. Radio Systems - This amount equals the total of Row/Account 2231.1 and 2231.2.

2230. Transmission - For Class A companies this amount equals the total of Row/Account 2231 and 2232. For Class B companies this amount equals the balance of account 2230.

2310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 2311 through 2362. For Class B companies this amount equals the balance of account 2310.

2410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 2411 through 2441. For Class B companies this amount equals the balance of account 2410.

2680. Amortizable Tangible Assets - For Class A companies this amount equals the total of Row/Account 2681 and 2682. For Class B companies this amount equals the balance of account 2680.

260. Total Telecommunications Plant-in-Service - This amount equals the total of Row/Account 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690. This amount must also equal Row/Account 2001.

3400. Accumulated Amortization-Tangible - For Class A companies this amount equals the total of Row/Account 3410 and 3420. For Class B companies this amount equals the balance of account 3400.

340. Total Depreciation and Amortization - This amount equals the total of Row/Account 3100, 3200, 3300, 3400, 3500 and 3600.

350. Net Plant - This amount equals row 210, column (af) less 340 column (bb).

360. Total Assets - This amount equals the total of Row/Account 130, 150, and 350.

410. Total Current Liabilities - This amount equals the total of Row/Account 4010 through 4130.

420. Total Long Term Debt - This amount equals the total of Row/Account 4210 + 4220 + 4240 + 4250 + 4260 + 4270 - 4230.

430. Total Other Liabilities and Deferred Credits - This amount equals the total of Row/Account 4310 through 4370.

440. Total Stockholders' Equity - This amount equals the total of Row/Account 4510 through 4550.

450. Total Liabilities and Stockholders' Equity - This amount equals the total of Rows 410 + 420 + 430 + 440. This amount must also equal row 360.

490. Retained Earnings (End of Year) - This amount equals the total of Rows 460 + 465 + 480 - 470 - 475. This amount must also equal Row/Account 4550.

TABLE II - INCOME STATEMENT ACCOUNTS

510. Basic Local Service Revenue (Class A Account 5000) - For Class A companies this amount equals the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies).

520. Basic Local Service Revenue - For Class A companies this amount equals the total of Row/Account 510, 5010, 5040, 5050, 5060, and 5069. For Class B companies this amount equals the balance of account 5000.

5080. Network Access Revenue - This amount equals the total of Row/Account 5081 through 5084.

5100 Long Distance Message Revenue (Class A companies only) - Class A companies should enter the balance of the Class A level account 5100.

5110. Unidirectional Long Distance Revenue - For Class A companies this amount equals the total of Row/Account 5111 and 5112.

5120. Long Distance Private Network Revenue - For Class A companies this amount equals the total of Row/Account 5121 through 5129.

525 Long Distance Network Services Revenues - Row 525 should be populated by both Class A and Class B companies. For Class A companies this amount equals the total of Row/Account 5100, 5110, 5120, 5160 and 5169. For Class B companies this amount equals the balance of account 5100.

5260. Miscellaneous Revenue (Class A Companies Only) - This amount equals the total of Row/Account 5261 through 5269.

5200. Miscellaneous Revenue - For Class A companies this amount equals the total of Row/Account 5230, 5240, 5250, 5260, 5270 and 5280. For Class B companies this amount equals the balance of account 5200.

5300. Uncollectible Revenue - For Class A companies this amount equals the total of Row/Account 5301 and 5302. For Class B companies this amount equals the balance of account 5300.

530. Total Operating Revenues - This amount equals the total of Row/Account 520, 5080, 525, and 5200 less 5300.

615. Net Balance-MV - For Class A companies this amount equals the total of Row/Account 6112 less 610.

625. Net Balance-Aircraft - For Class A companies this amount equals the total of Row/Account 6113 less 620.

635. Net Balance-SPV - For Class A companies this amount equals the total of Row/Account 6114 less 630.

645. Net Balance-OWE - For Class A companies this amount equals the total of Row/Account 6116 less 640.

6110. Network Support - For Class A companies this amount equals the total of Row/Account 615, 625, 635, 6115 and 645. For Class B companies this amount equals the balance of account 6110.

6120. General Support - For Class A companies this amount equals the total of Row/Account 6121 through 6124. For Class B companies this amount equals the balance of account 6120.

6210. Central Office-Switching - For Class A companies this amount equals the total of Row/Account 6211 through 6215. For Class B companies this amount equals the balance of account 6210.

6230. Central Office Transmission - For Class A companies this amount equals the total of Row/Account 6231 and 6232. For Class B companies this amount equals the balance of account 6230.

6310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 6311 through 6362. For Class B companies this amount equals the balance of account 6310.

6410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 6411 through 6441. For Class B companies this amount equals the balance of account 6410.

650. Total Plant Specific Operating Expenses - This amount equals the total of Row/Account 6110, 6120, 6210, 6220, 6230, 6310 and 6410.

665. Net Balance-Prov - For Class A companies this amount equals the total of Row/Account 6512 less 660.

6510. Other Property Plant and Equipment - For Class A companies this amount equals the total of Row/Account 6511 and 665. For Class B companies this amount equals the balance of account 6510.

675. Net Balance-POA - For Class A companies this amount equals the total of Row/Account 6534 less 670.

685. Net Balance-Eng - For Class A companies this amount equals the total of Row/Account 6535 less 680.

6530. Network Operations - For Class A companies this amount equals the total of Row/Account 6531, 6532, 6533, 675, and 685. For Class B companies this amount equals the balance of account 6530.

6560. Depreciation and Amortization - For Class A companies this amount equals the total of Row/Account 6561 through 6565. For Class B companies this amount equals the balance of account 6560.

690. Total Plant Non-Specific Expenses - This amount equals the total of Row/Account 6510, 6530, 6540 and 6560.

6610. Customer Operations-Marketing - For Class A companies this amount equals the total of Row/Account 6611 through 6613. For Class B companies this amount equals the balance of account 6610.

6620. Customer Operations-Services - For Class A companies this amount equals the total of Row/Account 6621 through 6623. For Class B companies this amount equals the balance of account 6620.

700. Total Customer Operations - This amount equals the total of Row/Account 6610 and 6620.

6710. Executive and Planning - For Class A companies this amount equals the total of Row/Account 6711 and 6712. For Class B companies this amount equals the balance of account 6710.

6720. General and Administrative - For Class A companies this amount equals the total of Row/Account 6721 through 6728. For Class B companies this amount equals the balance of account 6720.

710. Total Corporate Operations - This amount equals the total of Row/Account 6710, 6720 and 6790.

720. Total Operating Expenses - This amount equals the total of Row/Account 650, 690, 700 and 710.

730. Net Operating Revenue - This amount equals the total of Row 530, column (b) less 720, column (ab).

7100. Other Operating Income and Expenses - For Class A companies this amount equals the total of Row/Account 7110 through 7160. For Class B companies this amount equals the balance of account 7100. This formula assumes that all increases to net income amounts are reported as positive amounts. Any inverse amounts, i.e., reduction to net income are reported as negative amounts.

7200. Operating Taxes - For Class A companies this amount equals the total of Row/Account 7220 + 7230 + 7240 + 7250 - 7210. For Class B companies this amount equals the balance of account 7200. Credit balances should be subtracted. This formula assumes that amounts for investment tax credits (accounts 7210 and 7410) are normally credits and all other tax amounts are normally debits, i. e., reduction to net income. Any inverse amounts are reported as negative amounts.

7300. Nonoperating Income and Expense - For Class A companies this amount equals the total of Row/Account 7310 + 7320 + 7330 + 7340 + 7350 + 7360 - 7370. For Class B companies this amount equals the balance of account 7300.

7400. Nonoperating Taxes - For Class A companies this amount equals the total of Row/Account 7420 + 7430 + 7440 + 7450 - 7410. For Class B companies this amount equals the balance of account 7400. This formula assumes that amounts for investment tax credits (accounts 7210 and 7410) are normally credits and all other tax amounts are normally debits, i. e., reduction to net income. Any inverse amounts are reported as negative amounts.

7500. Interest and Related Items - For Class A companies this amount equals the total of Row/Account 7510 through 7540. For Class B companies this amount equals the balance of account 7500.

7600. Extraordinary Items - For Class A companies this amount equals the total of Row/Account 7610 - 7620 - 7630 - 7640. For Class B companies this amount equals the balance of account 7600. This formula assumes that extraordinary income credits are normally credits, extraordinary income charges are normally debits and that the extraordinary tax effects (accounts 7630 and 7640) are normally a reduction to net income. Any inverse amounts are reported as negative amounts.

790. Net Income - This amount equals the total of Row/Account 730, column (ab) + 7100, column (bb) + 7300, column (bb) + 7600, column (bb) + 7910, column (bb) + 7990, column (bb) - 7200, column (bb) - 7400, column (bb) - 7500, column (bb). This amount should also equal row 465.

NOTE: Class B companies should enter Class B Account balances in the appropriate rows and "N/A" in all columns of the Class A level rows. Unless otherwise indicated, Class A companies must enter data in every row, including the Class B level accounts.

TABLES I AND II - COLUMN INSTRUCTIONS

TABLE I - BALANCE SHEET ACCOUNTS

Column

(b) Amount - Enter the ending balance for the reporting period for each account identified in column (a).

(ab) Beginning Balance - Enter the balance at the beginning of the reporting period for each account identified in column (aa). This amount should equal the ending balance reported for the previous period. Otherwise, provide a footnote to explain the discrepancy,

(ac) Additions - Enter the amount representing plant added to each account during the reporting period.

(ad) Retirements - Enter the amount representing plant retired from each account during the reporting period.

(ae) Transfers/Adjustments - Enter the amount representing transfers to or from each account including adjustments made to each account during the reporting period.

(af) Ending Balance - Enter each account balance at the close of the reporting period. This amount equals column (ab) plus column (ac) plus column (ae) less column (ad). This formula assumes that retirements and transfers to accounts are reported as positive amounts. Any inverse amounts, e.g., "negative retirements" or transfers from accounts, are reported as negative amounts.

(bb) Amount - Enter the ending balance for the reporting period for

TABLE II - INCOME STATEMENT ACCOUNTS

Column

(b) Amount - Enter the ending balance for the reporting period for each account identified in column (a).

(ab) Total - Enter the ending balance for the reporting period for each account or subsidiary account identified in column (aa). This amount equals the total of columns (ac) through (af).

(ac) Salaries and Wages - Enter the amount representing salaries, wages, commissions, bonuses, incentive awards and termination payments pursuant to Section 32.5999(f)(1) for each account identified in column (aa). Enter the number of employees at the end of the year in a footnote. This number must be broken down by full time and part time employees.

(ad) Benefits - Enter the amount representing pensions, savings plan contributions, worker's compensation, life and health insurance, social security and other payroll taxes pursuant to Section 32.5999(f)(2).

(ae) Rents - Enter the amount representing payments for the use of real and personal operating property pursuant to Section 32.5999(f)(3).

(af) Other Expenses - Enter the amount representing costs which cannot be classified to salaries and wages, benefits or rents pursuant to Section 32.5999(f)(4). Such items include material and supplies, contracted services, accident and damage payments, insurance premiums, traveling expenses, and other miscellaneous costs.

(bb) Amount - Enter the ending balance for the reporting period for each account identified in column (ba).

TABLE III - STATEMENT OF CASH FLOWS

GENERAL INSTRUCTIONS

This table displays cash flows from the operating activities of the reporting carrier. All negative numbers should be immediately preceded by a minus (-) sign. All amounts must be rounded to the nearest thousand.

ROW INSTRUCTIONS

ROW

8000. Net Income/Loss - Enter net income for the current reporting period as a positive number. If it is a net loss, enter the amount as a negative number. This amount must equal row 790, column (bb), Table II.

8010. Depreciation and Amortization - Enter the amount for these accounts for the current reporting period as a positive number. This amount must equal row 6560, column (ab), Table II.

8020. Provision for Losses for Accounts Receivable - Enter the amount for this account for the current reporting period as a positive number. This amount must equal row 5300, column (b), Table II.

8030. Deferred Income Taxes-Net - If the sum of these accounts for the current reporting period is a debit amount, enter that amount as a positive number. If it is a credit amount, enter it as a negative number. The amount must equal the total of rows 7250, 7450, and 7640, Table II.

8040. Unamortized Investment Tax Credit-Net - If the amount for this account for the current reporting period is a debit amount, enter that amount as a positive number. If it is a credit amount, enter it as a negative number. The amount must equal rows 7210 and 7410, Table II.

8050. Allowance for Funds Used During Construction - Enter the amount for this account for the current reporting period as a negative number. This amount must equal row 7340, Table II.

8060. Net Change in Operating Receivables - If the sum of the balances of these accounts increased during the current reporting period, enter the change as a negative number. If it decreased, enter the change as a positive number.

8070. Net Change in Materials, Supplies and Inventories - If the balance in these accounts increased for the current reporting period, enter the change as a negative number. If it decreased, enter the change as a positive number.

8080. Net Change in Operating Payables and Accrued Liabilities - If the sum of the balances in these accounts increased during the current reporting period, enter the amount of change as a positive number. If this amount decreases, enter it as a negative number.

8090. Net Change in Other Assets and Deferred Charges - If the sum of the balances in these accounts increased during the current reporting period, enter the amount of the change as a negative number. If that amount decreased, enter the change as a positive number.

8100. Net Change in Other Liabilities and Deferred Credits - If the sum of the balances in these accounts increased during the current reporting period, enter the amount of the change as a positive number. If that amount decreased, enter the change as a negative number.

8110. Other - If the net of all other adjustments resulted in a cash inflow, enter the amount as a positive number. If it resulted in a cash outflow, enter the amount as a negative number.

8120. Total Adjustments - Enter the total of rows 8010 through 8110.

8130. Net Cash Provided by/Used in Operating Activities - Enter the sum of Rows 8000 and 8120.

8140. Construction/Acquisition of Property, Plant and Equipment - Enter the amount used for construction or acquisition of property, plant or equipment, net of AFUDC, during the current reporting period as a negative number.

8150. Proceeds from Disposal of Property, Plant and Equipment - If the net proceeds received during the current reporting period resulted in a net cash inflow, enter the amount as a positive number. If it resulted in a net cash outflow, enter the amount as a negative number.

8160. Investments in and Advances to Affiliates - Enter investments in and advances to affiliates for the current reporting year as a negative number.

8170. Proceeds from Repayment of Advances - Enter the proceeds received during the the current reporting period as a positive number.

8180. Other Investing Activities - If these activities result in a net cash inflow for the current reporting year, enter the amount as a positive number. If they result in a net cash outflow, enter the amount as a negative number.

8190. Net Cash Provided by/Used in Investing Activities - Enter the sum of rows 8140 through 8180.

8200. Net Increase/Decrease in Short-Term Debt - Enter a net increase in short-term debt, having maturities of less than three months, as a positive number. Enter a net decrease as a negative number.

8210. Advances from Affiliates - Enter the advances received during the current reporting period as a positive number.

8220. Repayment of Advances from Affiliates - Enter advances repaid during the current reporting period as a negative number.

8230. Proceeds from Long-Term Debt - Enter the proceeds received from long-term debt during the current reporting period as a positive number.

8240. Repayment of Long-Term Debt - Enter repayments of long-term debt for the current reporting period as a negative number.

8250. Payment of Capital Lease Obligations - Enter payments of capital lease obligations for the current reporting period as a negative number.

8260. Proceeds from Issuing Common Stock/Equity Investment from Parent - Enter the proceeds received from the issue of stock, or from investment by the parent, during the current reporting period as a positive number.

8270. Repurchase of Treasury Shares - Enter the cost of treasury shares repurchased during the current reporting period as a negative number.

8280. Dividends Paid - Enter the amount of dividends paid during the current reporting period as a negative number.

8290. Other Financing Activities - If these activities for the current reporting period result in a net cash inflow, enter the amount as a positive number. If they result in a net cash outflow, enter the amount as a negative number.

8300. Net Cash Provided by Financing Activities - Enter the total of rows 8200 through 8290.

8310. Effect of Exchange Rate Changes on Cash - Enter the effect (in dollars) of exchange rate changes on cash balances held in foreign currencies. If this amount increased cash, enter it as a positive number. If the amount decreased cash, enter it as a negative number.

8320. Net Increase/Decrease in Cash and Cash Equivalents - Enter the sum of rows 8130, 8190, 8300 and 8310.

8330. Cash and Cash Equivalents at Beginning of Period - Enter the amount of cash and cash equivalents at the beginning of the current reporting period as a positive number.

8340. Cash and Cash Equivalents at End of Period - Enter the sum of rows 8320 and 8330. This amount equals row 1120, column (b), Table I.

COLUMN DESCRIPTIONS

COLUMN

(b) Amount - Enter the amounts for rows 8010 through 8110, 8140 through 8180, and 8200 through 8290 in this column.

(c) Amount - Enter the amounts for rows 8000. 8120, 8130, 8190, 8300, 8310, 8320, 8330 and 8340 in this column.

TABLE IV.A - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES

GENERAL INSTRUCTIONS

This table displays the amount of carrier investment in affiliated companies accounted for under the "equity method", the amount of carrier investment in affiliated companies under the "cost method", and carrier investment in nonaffiliated companies. All amounts must be rounded to the nearest thousand dollars.

ROW

8350 through 8378. Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the "equity method." Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 8379) may be left blank.

8379. Enter the total amount of remaining investments, if any, associated with carrier investment in affiliated companies under the "equity method." This row is to be used only if rows 8350 through 8378 do not provide enough space for all of the reporting carrier's investments in affiliates under the "equity method"

8380. Total-Equity Method - The total of rows 8350 through 8379.

8390 through 8418. Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the "cost method." Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 8419) may be left blank.

8419. Enter the total amount of remaining investments, if any, associated with carrier investment in affiliated companies under the "cost method." This row is to be used only if rows 8390 through 8418 do not provide enough space for all of the reporting carrier's investments in affiliates under the "cost method."

8420. Total-Cost Method - The total of rows 8390 through 8419.

8430. Total Affiliates - The sum of rows 8380 and 8420.

8440. Non-Affiliates - Enter the aggregate amount of investment in non-affiliates.

8450. Total Investment - The sum of rows 8430 and 8440.

COLUMN DESCRIPTIONS

COLUMN

Account 1401 - Investments in Affiliated Companies, as defined in Section 32.1401 of the Commission's Rules.

Account 1402 - Investments in Nonaffiliated Companies, as defined in Section 32.1402 of the Commission's Rules.

(b) Company Name - The name of the company in which the reporting carrier has investments.

(c) Common - This column reflects the end-of-year balance of investment in common stock

(d) Preferred - This column reflects the end-of-year balance of investment in preferred stock.

(e) Advances - This column reflects the end-of-year balance of advances and special deposits of cash for more than one year from the date of deposit.

(f) Long-Term Debt - This column reflects the end-of-year balance of long term debt issued to other companies.

(g) Adjustments - This column reflects adjustments made for undistributed earnings or losses during the reporting period.

(h) Net - The net amount of columns (c) through (g).

Account 1160 - Temporary Investments, as defined in Section 32.1160 of the Commission's Rules.

(i) Beginning Balance - The appropriate portion of the balance of account 1160 at the beginning of the reporting period for each row item.

(j) Gross Debits - The gross amount of debits to account 1160 during the reporting period for each row item.

(k) Gross Credits - The gross amount of credits to account 1160 during the reporting period for each row item.

(l) Net - Column (i) plus column (j) less column (k).

Account 1180 - Telecommunications Accounts Receivable, as defined in Section 32.1180 of the Commission's Rules.

(m) Beginning Balance - The appropriate portion of the balance of account 1180 at the beginning of the reporting period for each row item.

(n) Gross Debits - The gross amount of debits to account 1180 during the reporting period for each row item.

(o) Gross Credits - The gross amount of credits to account 1180 during the reporting period for each row item.

(p) Net - Column (m) plus column (n) less column (o).

TABLE IV.B - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES

GENERAL INSTRUCTIONS

This table displays the amount of carrier investment in affiliated companies accounted for under the "equity method", the amount of carrier investment in affiliated companies under the "cost method", and carrier investment in nonaffiliated companies. All amounts must be rounded to the nearest thousand dollars.

ROW

9350 through 9378. Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the "equity method." Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 9379) may be left blank.

9379. Enter the total amount of remaining investments, if any, associated with carrier investment in affiliated companies under the "equity method." This row is to be used only if rows 9350 through 9378 do not provide enough space for all of the reporting carrier's investments in affiliates under the "equity method"

9380. Total-Equity Method - The total of rows 9350 through 9379.

9390 through 9418. Each of these rows is provided for the entry of data associated with carrier investment in affiliated companies under the "cost method." Use one row for each affiliate, in descending order by amount of investment. Enter data in only those rows for which the reporting carrier has investment in an affiliate. If the carrier has investment in fewer than 28 affiliates, the remaining rows (including row 9419) may be left blank.

9419. Enter the total amount of remaining investments, if any, associated with carrier investment in affiliated companies under the "cost method." This row is to be used only if rows 9390 through 9418 do not provide enough space for all of the reporting carrier's investments in affiliates under the "cost method."

9420. Total-Cost Method - The total of rows 9390 through 9419.

9430. Total Affiliates - The sum of rows 9380 and 9420.

9440. Non-Affiliates - Enter the aggregate amount of investment in non-affiliates.

9450. Total Investment - The sum of rows 8430 and 8440.

COLUMN DESCRIPTIONS

COLUMN

(b) Company Name - The name of the company in which the reporting carrier has investments.

Account 1190 - Other Accounts Receivable, as defined in Section 32.1190 of the Commission's Rules.

(c) Beginning Balance - The appropriate portion of the balance of account 1190 at the beginning of the reporting period for each row item.

(d) Gross Debits - The gross amount of debits to account 1190 during the reporting period for each row item.

(e) Gross Credits - The gross amount of credits to account 1190 during the reporting period for each row item.

(f) Net - Column (c) plus column (d) less column (e).

Account 1200 - Notes receivable, as defined in Section 32.1200 of the Commission's Rules.

(g) Beginning Balance - The appropriate portion of the balance of account 1200 at the beginning of the reporting period for each row item.

(h) Gross Debits - The gross amount of debits to account 1200 during the reporting period for each row item.

(i) Gross Credits - The gross amount of credits to account 1200 during the reporting period for each row item.

(j) Net - Column (g) plus column (h) less column (i).

Account 1210 - Notes receivable allowance, as defined in Section 32.1210 of the Commission's Rules.

(k) Beginning Balance - The appropriate portion of the balance of account 1210 at the beginning of the reporting period for each row item.

(l) Gross Debits - The gross amount of debits to account 1210 during the reporting period for each row item.

(m) Gross Credits - The gross amount of credits to account 1210 during the reporting period for each row item.

(n) Net - Column (k) plus column (l) less column (m).

(o) Total - The sum of columns (h), (l), and (p) from Table IV.A plus the sum of columns (f), (j) and (n) from Table IV.B.

TABLE V - ANALYSIS OF ASSETS PURCHASED FROM OR SOLD TO AFFILIATES

GENERAL INSTRUCTIONS

This table displays data regarding the purchase of assets from, and the sale of assets to, affiliates. All dollar amounts must be rounded to the nearest thousand dollars.

ROW INSTRUCTIONS

ROW	
8460 through 8498.	Each of these rows is provided for the entry of data associated with the purchase of assets from affiliates. Use one row for each affiliate, in descending order of the amount of purchases from each affiliate. Enter data in only those rows for which the reporting carrier has purchased assets from an affiliate. If the carrier has purchased assets from less than 38 affiliates, the remaining rows (including row 8499) may be left blank.
8499.	Purchases From All Other Affiliates - Enter the total amount of remaining purchases, if any, from affiliates in this row. This row is to be used only if rows 8460 through 8498 do not provide enough space for all of the reporting carrier's affiliates from whom purchases were made during the reporting period.
8500.	Total Purchases - The total of rows 8460 through 8499.
8510 through 8548.	Each of these rows is provided for the entry of data associated with the sale of assets to affiliates. Use one row for each affiliate, in descending order of the amount of sales to each affiliate. Enter data in only those rows for which the reporting carrier has sold assets to an affiliate. If the carrier has sold assets to less than 38 affiliates, the remaining rows (including row 8549) may be left blank.
8549.	Sales To All Other Affiliates - Enter the total amount of remaining sales, if any, from affiliates in this row. This row is to be used only if rows 8510 through 8558 do not provide enough space for all of the reporting carrier's affiliates from whom purchases were made during the reporting period.

8550. _ Total Sales - The total of rows 8510 through 8549.

COLUMN DESCRIPTIONS

COLUMN

(b) Name of Affiliate - Enter the names of the affiliates from whom assets were purchased for $100,000 or more in rows 8460 through 8498 and to whom assets were sold for $100,000 or more in rows 8510 through 8548.

(c) Net Book Cost - Enter the amount of assets purchased from affiliates at net book cost in rows 8460 through 8499 and assets sold to affiliates at net book cost in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c).

(d) Fair Market Value - Enter the amount of assets purchased from affiliates at fair market value in rows 8460 through 8499 and sold to affiliates at fair market value in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c).

(e) Tariff - Enter the amount of assets purchased from affiliates under tariffed rates in rows 8460 through 8499 and sold to affiliates under tariffed rates in rows 8510 through 8549, pursuant to Section 32.27(c).

(f) Prevailing Market Price - Enter the amount of assets purchased from affiliates at the prevailing market price in rows 8460 through 8499 and sold to affiliates at the prevailing market price in rows 8510 through 8549, pursuant to Sections 32.27(b) and (c).

(g) Total Purchases/Sales - Enter the total of columns (c), (d), (e), and (f).

TABLE VI - ANALYSIS OF SERVICES PURCHASED FROM OR SOLD TO AFFILIATES

This table displays data regarding the purchase of services from, and the sale of services to affiliates. All dollar amounts must be rounded to the nearest thousand.

ROW INSTRUCTIONS

ROW	
8570 through 8608.	Each of these rows is provided for entry of data associated with the purchase of services from affiliates. Use one row for each affiliate, in descending order of the amount of purchases from each affiliate. Enter data in only those rows for which the reporting carrier has purchased services from an affiliate. If the carrier has purchased services from fewer than 38 affiliates, the remaining rows (including row 8609) may be left blank.
8609.	Purchases From All Other Affiliates - Enter the total amount of remaining purchases, if any, from affiliates in this row. This row is to be used only if rows 8570 through 8608 do not provide enough space for all of the reporting carrier's affiliates from whom purchases were made during the reporting period.
8610.	Total Purchases - The total of rows 8570 through 8609.
8620 through 8658.	Each of these rows is provided for entry of data associated with the sale of services to affiliates. Use one row for each affiliate, in descending order of the amount of sales to each affiliate. Enter data in only those rows for which the reporting carrier has sold services to an affiliate. If the carrier has sold services to fewer than 38 affiliates, the remaining rows (including row 8659) may be left blank.
8659.	Sales to All Other Affiliates - Enter the total amount of remaining sales, if any, to affiliates in this row. This row is to be used only if rows 8620 through 8658 do not provide enough space for all of the reporting carrier's affiliates to whom sales were made.
8660.	Total Sales - The total of rows 8620 through 8659.

COLUMN DESCRIPTIONS

COLUMN

(b) Name of Affiliate - Enter the name of the affiliates from whom services were purchased for $100,000 or more in rows 8570 through 8608 and to whom services were sold for $100,000 or more in rows 8620 through 8658.

(c) Fully Distributed Cost - Enter the amount of services purchased from affiliates at fully distributed cost in rows 8570 through 8609 and the amount of services sold to affiliates at fully distributed cost in rows 8620 through 8659, pursuant to Section 32.27(d).

(d) Tariff Rate - Enter the amount of services purchased from affiliates under tariffed rates in rows 8570 through 8609 and the amount of services sold to affiliates under tariffed rates in rows 8620 through 8659, pursuant to 32.27(d).

(e) Prevailing Market Price - Enter the amount of services purchased from affiliates at the prevailing market price in rows 8570 through 8609 and the amount of services sold to affiliates at the prevailing market price in rows 8620 through 8659, pursuant to 32.27(d).

(f) Total Purchases/Sales - The total of columns (c), (d), and (e).

TABLE VII - NET DEFERRED INCOME TAXES

GENERAL INSTRUCTIONS

This table displays data regarding net deferred operating income taxes and net deferred nonoperating income taxes in accounts 4100, 4340, 4110 and 4350. All dollar amounts must be rounded to the nearest thousand.

ROW INSTRUCTIONS

ROW

Property Related - This amount is maintained in subsidiary record categories of the books of account so that it may be identified apart from nonproperty related amounts, pursuant to Sections 32.4100(e), 32.4110(h), 32.4340(e) and 32.4350(h) of the Commission's Rules.

Account 4100 - Net current deferred operating income taxes, as defined in Section 32.4100 of the Commission's Rules.

8670. Federal Income Taxes - The amount of property-related, operating federal income tax expense related to current items from regulated operations which have been deferred to later periods as a result of the normalized method of accounting for tax differentials authorized by the Commission and not provided for elsewhere.

8671. State and Local Income Taxes - The amount of property-related, operating state and local income tax expense related to current items from regulated operations which have been deferred to later periods as a result of the normalized method of accounting for tax differentials authorized by the Commission and not provided for elsewhere.

8672. Total Net Current Deferred Operating Income Taxes - The total of rows 8670 and 8671.

Account 4340 - Net noncurrent deferred operating income taxes, as defined in Section 32.4340 of the Commission's Rules.

8680. Federal Income Taxes - The amount of property-related, federal income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation relating to timing differences that arise from regulated operations.

8681. State and Local Income Taxes - The amount of property-related, state and local income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation relating to timing differences that arise from regulated operations.

8682. Total Net Noncurrent Deferred Operating Income Taxes - The total of rows 8680 and 8681.

8690. Total Property Related Deferred Operating Income Taxes - The total of rows 8672 and 8682.

Nonproperty Related - This amount is maintained in subsidiary record categories of the books of account so that it may be identified apart from property related amounts, pursuant to Sections 32.4100(e) and 32.4340(e) of the Commission's Rules.

8700. Federal Income Taxes - The amount of nonproperty-related federal income tax expense related to current items from regulated operations which have been deferred to later periods as a result of the normalized method of accounting for tax differentials authorized by the Commission and not provided for elsewhere.

8701. State and Local Income Taxes - The amount of nonproperty-related state and local income tax expense related to current items from regulated operations which have been deferred to later periods as a result of the normalized method of accounting for tax differentials authorized by the Commission and not provided for elsewhere.

8702. Total Net Current Deferred Operating Income Taxes - The total of rows 8700 and 8701.

8710. Federal Income Taxes - The amount of nonproperty-related federal income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to timing differences that arise from regulated operations.

8711. State and Local Income Taxes - The amount of nonproperty-related state and local income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to timing differences that arise from regulated operations.

8712. Total Net Noncurrent Deferred Operating Income Taxes - The total of rows 8710 and 8711.

8720. Total Nonproperty Related Deferred Operating Income Taxes - The total of rows 8702 and 8712.

Account 4110 - Net current deferred nonoperating income taxes, as defined in Section 32.4110 of the Commission's Rules.

8730. Federal Income Taxes - The amount of property-related nonoperating federal income tax expense which has been deferred to later periods as a result of comprehensive interperiod tax allocation.

8731. State and Local Income Taxes - The amount of property-related nonoperating state and local income tax expense which has been deferred to later periods as a result of comprehensive interperiod tax allocation.

8740. Federal Income Taxes - The amount of property-related federal income tax expense, related to current extraordinary items, which has been deferred to later periods as a result of comprehensive interperiod tax allocation.

8741. State and Local Income Taxes - The amount of property-related state and local income taxes, related to current extraordinary items, which has been deferred to later periods as a result of comprehensive interperiod tax allocation.

8750. Net Current Deferred Nonoperating Income Taxes - The total of rows 8730, 8731, 8740 and 8741.

Account 4350 - Net noncurrent deferred nonoperating income taxes, as defined in Section 32.4350.

8760. Federal Income Taxes - The amount of property-related federal income tax expense that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating timing differences.

8761. State and Local Income Taxes - The amount of property-related state and local income tax expense that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating timing differences.

8770. Federal Income Taxes - The amount of property-related federal income tax effect related to noncurrent extraordinary items which have been included in the determination of taxable income in a period different from when it is included in the determination of book income, that is, more than one year.

8771. State and Local Income Taxes - The amount of property-related state and local income tax effect related to noncurrent extraordinary items which have been included in the determination of taxable income in a period different from when it is included in the determination of book income, that is, more than one year.

8780. Total Net Noncurrent Deferred Nonoperating Income Taxes - The total of rows 8760, 8761, 8770, and 8771.

8790. Total Property Related Deferred Nonoperating Income Taxes - The total of rows 8750 and 8780.

8800. Federal Income Taxes - The amount of nonproperty-related federal income tax expense, related to current nonoperating items, resulting from comprehensive interperiod tax allocation which has been deferred to later periods.

8801. State and Local Income Taxes - The amount of nonproperty-related state and local income tax expense, related to current nonoperating items, resulting from comprehensive interperiod tax allocation which has been deferred to later periods.

8810. Federal Income Taxes - The amount of nonproperty-related federal income tax expense, related to current extraordinary items, which have been deferred to later periods resulting from comprehensive interperiod tax allocation.

8811. State and Local Income Taxes - The amount of nonproperty-related state and local income tax expense, related to current extraordinary items, which have been deferred to later periods resulting from comprehensive interperiod tax allocation.

8820. Total Net Current Deferred Nonoperating Income Taxes - The total of rows 8800, 8801, 8810, and 8811.

8830. Federal Income Taxes - The amount of nonproperty-related federal income tax expense that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating timing differences.

8831. State and Local Income Taxes - The amount of nonproperty-related state and local income tax expense that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating timing differences.

8840. Federal Income Taxes - The amount of nonproperty-related federal income tax effect related to noncurrent extraordinary items which have been included in the determination of taxable income in a period different from when it is included in the determination of book income, that is, more than one year.

8841. State and Local Income Taxes - The amount of nonproperty-related state and local income tax related to noncurrent extraordinary items which have been included in the determination of taxable income in a period different from when it is included in the determination of book income, that is, more than one year.

8850. Total Net Noncurrent Deferred Nonoperating Income Taxes - The total of rows 8830, 8831, 8840, and 8841.

8860. Total Nonproperty Related Deferred Nonoperating Income Taxes - The total of rows 8820 and 8850.

COLUMN DESCRIPTIONS

COLUMN

(b) Beginning Balance - Enter the balance at the beginning of the reporting period for each row item.

(d) Current Year Accrual - Enter the amount of deferrals for the current reporting period for each row item.

(e) Current Year Amortization - Enter the amount of amortization for the current reporting period for each row item.

Adjustments - These columns reflect the total amount of debit or credit adjustments. Each adjustment of $100,000 or more must be explained in a footnote.

(f) Debit - Enter the total amount of debit adjustments.

(g) Credit - Enter the total amount of credit adjustments.

(h) End of Year Balance - Enter the end-of-year balance for the reporting period for each row item.

TABLE VIII - PENSION COST

GENERAL INSTRUCTIONS

This table displays the end-of-year amounts for the current and previous reporting periods for each major pension plan used by the reporting carrier. All dollar amounts must be rounded to the nearest thousand. Percents must be rounded to two places. Number of employees must be in whole numbers.

ROW INSTRUCTIONS

Rows 8870 through 9021 pertain to the reporting carrier's primary pension plan for its managerial employees.

ROW

8870. Accumulated Benefit Obligation - Enter the actuarial present value of benefits, as of a specific date during the calendar year, determined according to the terms of the pension plan, based on employees' compensation and service to that date (salary progression is not considered in making this computation.)'

8871. Projected Benefit Obligation - Enter the actuarial present value of all benefits attributed to employee service, up to a specific date, based on the terms of the plan, including a salary progression factor for that pay and career average pay plans.

8872. Fair Value of Plan Assets - Enter the amount that the pension plan would reasonably expect to receive for its investments in a current sale between an willing buyer and a willing seller, that is, a sale other than a forced or liquidation sale.

8873. Discount Rate for Settlement of Liabilities - Enter the discount rate (%) that was used to adjust the present values, for the settlement of liabilities.

8874. Expected Long-Term Return on Assets - Enter the rate (%) of return expected on funds invested, or to be invested, to provide the benefits included in the projected benefit obligation.

8880. Service Cost - Enter the service cost of the net periodic pension calculation.

8881. Interest Cost - Enter the interest cost of the net periodic pension cost calculation.

ROW

8882. Return on Plan Assets - Enter the amount of return on plan assets (in dollars) of the periodic pension cost calculation.

8883. Amortization of Transition Amount - Enter the amount of amortization of the transition amount of the net periodic cost calculation.

8884. Amortization of Gains or Losses - Enter the amount of amortization of gains or losses of the net periodic cost calculation.

8885. Total - The total of rows 8880 through 8884.

8890. Number of Active Employees - Enter the number of active employees participating in this pension plan.

8891. Number of Retired Employees - Enter the number of retired employees participating in this pension plan.

9000. Minimum Required Contribution - Enter the amount of the reporting carrier's minimum payment to its managerial employees' pension fund to meet the requirement set forth in the Employee Retirement Income Security Act of 1974 (ERISA).

9001. Actual Contribution - Enter the amount actually contributed by the reporting carrier to its managerial employees' pension fund.

9002. Maximum Amount Deductible - Enter the maximum amount of pension expense allowable under Section 415 of the Internal Revenue Code at the reporting company level.

9003. Benefit Payments - Enter the amount of disbursements from pensions to entitled participants for pension benefits, death benefits, and benefits due on termination of employment, at the reporting company level.

9010. Pension Cost - Enter the reporting company's total pension cost.

9011. Pension Cost Capitalized - Enter the reporting company's amount of capitalized pension cost.

9012. Accumulated Pension Asset/Liability-End of Year - Enter the reporting company's pension cost or liability at the end of the year.

ROW

9020. Number of Active Employees - Enter the number of active employees, in the employ of the reporting carrier, participating in this pension plan.

9021. Number of Retired Employees - Enter the number of retired employees, in the employ of the reporting carrier, participating in this pension plan.

Rows 9030 through 9081 pertain to the reporting carrier's primary pension plan for its non-managerial employees.

9030. Accumulated Benefit Obligation - Enter the actuarial present value of benefits, as of a specific date during the calendar year, determined according to the terms of the pension plan, based on employees' compensation and service to that date (salary progression is not considered in making this computation.)

9031. Projected Benefit Obligation - Enter the actuarial present value of all benefits attributed to employee service, up to a specific date, based on the terms of the plan, including a salary progression factor for that pay and career average pay plans.

9032. Fair Value of Plan Assets - Enter the amount that the pension plan would reasonably expect to receive for its investments in a current sale between a willing buyer and a willing seller, that is, a sale other than a forced or liquidation sale.

9033. Discount Rate for Settlement of Liabilities - Enter the discount rate (%) that was used to adjust to present values, for the settlement of liabilities.

9034. Expected Long-Term Return on Assets - Enter the rate (%) of return expected on funds invested, or to be invested, to provide the benefits included in the projected benefit obligation.

9040. Service Cost - Enter the service cost of the net periodic pension calculation.

9041. Interest Cost - Enter the interest cost of the net periodic pension cost calculation.

9042. Return on Plan Assets - Enter the amount of return on plan assets (in dollars) of the periodic pension cost calculation.

ROW

9043. Amortization of Transition Amount - Enter the amount of amortization of the transition amount of the net periodic cost calculation.

9044. Amortization of Gains or Losses - Enter the amount of amortization of gains or losses of the net periodic cost calculation.

9045. Total - The total of rows 9040 through 9044.

9050. Number of Active Employees - Enter the number of active employees participating in this pension plan.

9051. Number of Retired Employees - Enter the number of retired employees participating in this pension plan.

9060. Minimum Required Contribution - Enter the amount of the reporting carrier's minimum payment to its non-managerial employees' pension fund to meet the requirement set forth fin the Employee Retirement Income Security Act of 1974 (ERISA).

9061. Actual Contribution - Enter the amount actually contributed by the reporting carrier to its non-managerial employees' pension fund.

9062. Maximum Amount Deductible - Enter the maximum amount of pension expense allowable under Section 415 of the Internal Revenue Code at the reporting company level.

9063. Benefit Payments - Enter the amount of disbursements from pensions to entitled participants for pension benefits, death benefits, and benefits due on termination of employment, at the reporting company level.

9070. Pension Cost - Enter the reporting company's total pension cost.

9071. Pension Cost Capitalized - Enter the reporting company's amount of capitalized pension cost.

9072. Accumulated Pension Asset/Liability-End of Year - Enter the reporting company's pension cost or liability at the end of the year.

9080. Number of Active Employees - Enter the number of active employees, in the employ of the reporting carrier, participating in this pension plant.

ROW

9081. Number of Retired Employees - Enter the number of retired employees, in the employ of the reporting carrier, participating in this pension plan.

Rows 9090 through 9141 pertain to the reporting carrier's alternative pension plan for its managerial employees.

9090. Accumulated Benefit Obligation - Enter the actuarial present value of benefits, as of a specific date during the calendar year, determined according to the terms of the pension plan, based on employees compensation and service to that date (salary progression is not considered in making this computation.)

9091. Projected Benefit Obligation - Enter the actuarial present value of all benefits attributed to employee service, up to a specific date, based on the terms of the plan, including a salary progression factor for that pay and career average pay plans.

9092. Fair Value of Plan Assets - Enter the amount that the pension plan would reasonably expect to receive for its investments in a current sale between a willing buyer and a willing seller, that is, a sale other than a forced or liquidation sale.

9093. Discount Rate for Settlement of Liabilities - Enter the discount rate (%) that was used to adjust to present values, for the settlement of liabilities.

9094. Expected Long-Term Return on Assets - Enter the rate (%) of return expected on funds invested, or to be invested, to provide the benefits included in the projected benefit obligation.

9100. Service Cost - Enter the service cost of the net periodic pension calculation.

9101. Interest Cost - Enter the interest cost of the net periodic pension cost calculation.

9102. Return on Plan Assets - Enter the amount of return on plan assets (in dollars) of the periodic pension cost calculation.

9103. Amortization of Transition Amount - Enter the amount of amortization of the transition amount of the net periodic cost calculation.

9104. Amortization of Gains or Losses - Enter the amount of amortization of gains or losses of the net periodic cost calculation.

ROW

9105. Total - The total of rows 9100 through 9104.

9110. Number of Active Employees - Enter the number of active employees participating in this pension plan.

9111. Number of Retired Employees - Enter the number of retired employees participating in this pension plan.

9120. Minimum Required Contribution - Enter the amount of the reporting carrier's minimum payment to its managerial employees' pension fund to meet the requirement set forth in the Employee Retirement Income Security Act of 1974 (ERISA).

9121. Actual Contribution - Enter the amount actually contributed by the reporting carrier to its managerial employees' pension fund.

9122. Maximum Amount Deductible - Enter the maximum amount of pension expense allowable under Section 415 of the Internal Revenue Code at the reporting company level.

9123. Benefit Payments - Enter the amount of disbursements from pensions to entitled participants for pension benefits, death benefits, and benefits due on termination of employment, at the reporting company level.

9130. Pension Cost - Enter the reporting company's total pension cost.

9131. Pension Cost Capitalized - Enter the reporting company's amount of capitalized pension cost.

9132. Accumulated Pension Asset/Liability-End of Year - Enter the reporting company's pension cost or liability at the end of the year.

9140. Number of Active Employees - Enter the number of active employees, in the employ of the reporting carrier, participating in this pension plan.

9141. Number of Retired Employees - Enter the number of retired employees, in the employ of the reporting carrier, participating in this pension plan.

Rows 9150 through 9201 pertain to the reporting carrier's alternative pension plan for its non-managerial employees.

ROW

9150. Accumulated Benefit Obligation - Enter the actuarial present value of benefits, as of a specific date during the calendar year, determined according to the terms of the pension plan, based on employees' compensation and service to that date (salary progression is not considered in making this computation.)

9151. Projected Benefit Obligation - Enter the actuarial present value of all benefits attributed to employee service, up to a specific date, based on the terms of the plan, including a salary progression factor for that pay and career average pay plans.

9152. Fair Value of Plan Assets - Enter the amount that the pension plan would reasonably expect to receive for its investments in a current sale between a willing buyer and a willing seller, that is, a sale other than a forced or liquidation sale.

9153. Discount Rate for Settlement of Liabilities - Enter the discount rate (%) that was used to adjust to present values, for the settlement of liabilities.

9154. Expected Long-Term Return on Assets - Enter the rate (%) of return expected on funds invested, or to be invested, to provide the benefits included in the projected benefit obligation.

9160. Service Cost - Enter the service cost of the net periodic pension calculation.

9161. Interest Cost - Enter the interest cost of the net periodic pension cost calculation.

9162. Return on Plan Assets - Enter the amount of return on plan assets (in dollars) of the periodic pension cost calculation.

9163. Amortization of Transition Amount - Enter the amount of amortization of the transition amount of the net periodic cost calculation.

9164. Amortization of Gains or Losses - Enter the amount of amortization of gains or losses of the net periodic cost calculation.

9165. Total - The total of rows 9160 through 9164.

ROW -

9170. Number of Active Employees - Enter the number of active employees participating in this pension plan.

9171. Number of Retired Employees - Enter the number of retired employees participating in this pension plan.

9180. Minimum Required Contribution - Enter the amount of the reporting carrier's minimum payment to its non-managerial employees' pension fund to meet the requirement set forth in the Employee Retirement Income Security Act of 1974 (ERISA).

9181. Actual Contribution - Enter the amount actually contributed by the reporting carrier to its non-managerial employees' pension fund.

9182. Maximum Amount Deductible - Enter the maximum amount of pension expense allowable under Section 415 of the Internal Revenue Code at the reporting company level.

9183. Benefit Payments - Enter the amount of disbursements from pensions to entitled participants for pension benefits, death benefits, and benefits due on termination of employment, at the reporting company level.

9190. Pension Cost - Enter the reporting company's total pension cost.

9191. Pension Cost Capitalized - Enter the reporting company's amount of capitalized pension cost.

9192. Accumulated Pension Asset/Liability-End of Year - Enter the reporting company's pension cost or liability at the end of the year.

9200. Number of Active Employees - Enter the number of active employees, in the employ of the reporting carrier, participating in this pension plan.

9201. Number of Retired Employees - Enter the number of retired employees, in the employ of the reporting carrier, participating in this pension plan.

Table VIII - Column Descriptions

Column

(b) Current Year - Enter the appropriate amounts for the current reporting period.

(c) Previous Year - Enter the appropriate amounts for the preceding reporting period.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "US".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Unrestricted Version of the initial USOA Report data file to be submitted by Illinois Bell to cover the calendar year 1991, would be LBIL91US.U01:

LBIL	COSA for Illinois Bell
91	Data for calendar year 1991
US	USOA Report data file
.	decimal point
U	Unrestricted version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number and percentage fields, which will include a decimal point but not a percent sign.

5. In any numeric data field designated by N/A, enter -99999. In any text field designated by N/A, include quotation marks. If a "Public Version" diskette is filed, enter -88888 in any numeric data field for which data are "withheld". These entries should be formatted according to the format rules of a particular data field; e.g., in percentage fields, -99999 would be entered as -99999.00. All other fields must be populated.

6. If a reporting carrier wishes to apply data to a numeric field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. The amount(s) must not be entered in the N/A's field. If there are no data applicable to an open field, enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all dollar amounts must be rounded to the nearest thousand dollars.

2. All percentage amounts (e.g., Expected Long Term Return On Assets), must be entered in percent and must be rounded to two places.

Example: 12 2/3 percent should be entered as 12.67

3. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

E. Data Record Descriptions

The fifteen data record types are described below. See pages 7 through 32 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 32 Type B1 records, followed by 53 Type P1 records, followed by 53 Type B1 records, followed by 48 Type B1 records, followed by 91 Type X1 records, followed by 39 Type B1 records, followed by 36 Type D1 records, followed by 65 Type I1 records, followed by 65 Type V1 records, followed by 82 Type A1 records, followed by 82 Type S1 records, followed by 36 Type N1 records, followed by 88 Type R1 records, followed by one or more Type C3 records, followed by one or more Type F3 records, followed by zero or more Type E4 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 7 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 8 for record layout.
Record Type B1	Account Balance Data Record	171 Type B1 records per file. One Type B1 record for each of the 32 rows shown on Page 3 of the accompanying Report Definition. After the 53 Type P1 records (see below), include one Type B1 record for each of the 53 rows shown on Page 5 of the accompanying Report Definition. Then include one Type B1 record for each of the 48 rows shown on Page 6 of the accompanying Report Definition. After the 91 Type X1 records (see below), include one Type B1 record for each of the 39 rows shown on Page 9 of the accompanying Report Definition. Each record contains the ending balance or dollar amount recorded in that particular account. See page 9 for record layout.

Record Type P1	Period Activity Data Record	53 Type P1 records per file. One record for each of the 53 rows shown on Page 4 of the accompanying Report Definition. Each record contains the details of the activity of the account during the reporting period. See pages 10 & 11 for record layout.
Record Type X1	Expense Matrix Data Record	91 Type X1 records per file. One record for each of the 91 rows of expense data shown on Pages 7 & 8 of the accompanying Report Definition. Each record contains the dollar amounts for the expense matrix elements. See pages 12 & 13 for record layout.
Record Type D1	Cash Flows Data Record	36 Type D1 records per file. One record for each of the 36 rows of cash activities shown on Pages 10 & 11 of the accompanying Report Definition. Each record contains increase/ decrease in cash and cash equivalents. See page 14 for record layout.
Record Type I1	Investments-Part I Data Record	65 Type I1 records per file. One record for each of the 65 rows of investment accounts shown on Pages 12-15 of the accompanying Report Definition. Each record displays the amount of carrier investment in affiliated companies accounted for under the "equity method" and the "cost method" and investment in nonaffiliated companies. See pages 15-16 for record layout.
Record Type V1	Investments-Part II Data Record	65 Type V1 records per file. One record for each of the 65 rows of investment accounts shown on Pages 16-19 of the accompanying Report Definition (See above Type I1 data record) See pages 17-18 for record layout.

Record Type A1	Assets Purchased or Sold Data Record	82 Type A1 record per file. One record for each of the 86 rows of assets purchased or sold as displayed on Pages 20 & 21 of the accompanying Report Definition. Each record displays data regarding the purchase of assets from and sales of assets to affiliates. See pages 19 & 20 for record layout.
Record Type S1	Services Purchased or Sold Data Data Record	82 Type S1 records per file. One record for each of the 82 rows of services purchased or sold as displayed on Pages 22 and 23 of the accompanying Record Definition. Each record displays data regarding the purchase of services from, and the sale of services to affiliates. See pages 21 & 22 for record layout.
Record Type N1	Net Deferred Taxes Data Record	36 Type N1 records per file. One record for each of the 36 rows of income tax accounts shown on Pages 24-26 of the accompanying Report Definition. Each record displays data regarding net deferred operating/nonoperating income taxes in particular accounts See pages 23 & 24 for record layouts.
Record Type R1	Pension Cost Data Record	88 Type R1 records per file. One record for each of the 88 rows of pension cost displayed on Pages 27-30 of the accompanying Report Definition. Each record displays the end-of-year amounts for the current and previous reporting periods for each major pension plan. See page 25 for record layout.

Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 26 & 27 for record layout.
Record Type F3	Footnote Record	One or more Type F3 records per file. Contains explanatory footnote text. See page 28 & 29 for record layout.
Record Type E4	Erratum Record	Zero Type E4 records in the first submission of a year's data. One or more Type E4 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 30 & 31 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 32 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number-	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL91US.U01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1991	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19920315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"U"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5          . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .    Ruler line
Sample record:
1001,"LBIL","H1","LBIL91US.U01",1991,0,19920315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-02"	18-35	Always contains "FCC REPORT 43-02" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	" "	70-91	Name of the study area. Usually blank, since this is an operating company level report. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1991 to Dec 1991"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1002,"LBIL","L1","FCC REPORT 43-02","Illinois Bell                ","                    ","Jan 1991 to Dec 1991","XQ
```

RECORD TYPE B1 - ACCOUNT BALANCE DATA RECORD

Field	Item	Example	Position	Description
1	Record Number-	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"B1"	13-16	Always contains the letter B capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1130.0	18-23	Row number as identified on Pages 3, 5, 6 & 9 of the accompanying Report Definition. Valid ranges: 120.0 to 150.0, 340.0 to 490.0, 510.0 to 530.0, 790.0, 1120.0 to 1500.0, 3100.0 to 4550.0, 5001.0 to 5302.0, 7100.0 to 7990.0. Format: right justified and space filled. with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Account Balance data	5432	25-33	This field contains the ending balance or dollar amount recorded in the particular account. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	35-38	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type B1, P1, X1, D1, I1, V1, A1, S1, M1, R1 and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3
12345678901234567890123456789012345678
Sample records:
1003,"LBIL","B1",1130.0,      5432,"XQ"
1088,"LBIL","B1",3100.0,      5432,"XQ"
1141,"LBIL","B1",5001.0,      5432,"XQ"
1280,"LBIL","B1",7110.0,      5432,"XQ"
```

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1035	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"P1"	13-16	Always contains the letter P capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2001.0	18-23	Row number as identified on Page 4 of the accompanying Report Definition. Valid ranges: 210.0 to 260.0, 2001.0 to 2690.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g. 2215.1) use the row number as shown.
5	Column (ab) data	65432	25-33	This field contains the data corresponding to column (ab) as shown on Page 4 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	2716	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	2716	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	60000	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type P1, B1, X1, D1, I1, V1, A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1035,"LBIL","P1",2001.0,    65432,    2716,    5432,    2716,    60000,"XQ"
1056,"LBIL","P1",2215.1,    15432,    2716,    5432,    2716,    10000,"XQ"
```

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1189	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"X1"	13-16	Always contains the letter X capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	6112.0	18-23	Row number as identified on Pages 7 & 8 of the accompanying Report Definition. Valid ranges: 610.0 to 730.0, 6110.0 to 6790.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (ab) data	21720	25-33	This field contains the data corresponding to column (ab) as shown on Pages 7 & 8 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	5432	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	5432	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	5432	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

A footnote record is needed for column (ac) to show the number of full-time and part-time employees at the end of the year.

Footnote records are also needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type X1, B1, D1, I1, V1, A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1189,"LBIL","X1",6112.0,    21728,     5432,     5432,     5432,     5432,"XQ"
```

RECORD TYPE D1 - CASH FLOWS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1319	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"D1"	13-16	Always contains the letter D capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8000.0	18-23	Row number as identified on page 10-11 of the accompanying Report Definition. Valid ranges: 80000.0 to 8340.0 Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to the row number.
5	Column (b) data	-99999	25-33	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	199210	35-43	Column (c) data Format: see Field 5 above.
7	End of Record Code	"XQ"	45-48	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type D1, I1, V1, A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4
1234567890123456789012345678901234567890123456789012345678
Sample records:
1319,"LBIL","D1",8000.0,   -99999,    2716, "XQ"
1320,"LBIL","D1",8010.0,    15432, -99999, "XQ"
```

RECORD TYPE I1 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES-PART I DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1354	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"I1"	13-16	Always contains the letter I capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8350.0	18-23	Row number as identified on pages 12-15 of the accompanying Report Definition. Valid ranges: 8350.0 to 8450.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data (spaces until pos. 66)	"Illinois Bell Admin Center, Inc."	25-66	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: left justified and space filled. All fields must be populated. If there are no data applicable to an open field enter zero. Include quotation marks.
6	Column (c) data	5432	68-76	This field contains the data corresponding to column (c) as shown on the accompanying Report Definition. DO NOT override designated N/As. Format: right justified and space filled Enter -99999 all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	5432	78-86	Column (d) data Format: see Field 6 above.
8	Column (e) data	1358	88-96	Column (e) data Format: see Field 6 above.
9	Column (f) data	1358	98-106	Column (f) data Format: see Field 6 above.
10	Column (g) data	2716	108-116	Column (g) data Format: see Field 6 above.

RECORD TYPE I1 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES-PART I DATA RECORD(continued)

Field	Item	Example	Position	Description
11	Column (h) data	16296	118-126	Column (h) data Format: see Field 6 above.
12	Column (i) data	3197	128-136	Column (i) data Format: see Field 6 above.
13	Column (j) data	2242	138-146	Column (j) data Format: see Field 6 above.
14	Column (k) data	1404	148-156	Column (k) data Format: see Field 6 above.
15	Column (l) data	4035	158-166	Column (l) data Format: see Field 6 above.
16	Column (m) data	0	168-176	Column (m) data Format: see Field 6 above.
17	Column (n) data	0	178-186	Column (n) data Format: see Field 6 above.
18	Column (o) data	0	188-196	Column (o) data Format: see Field 6 above.
19	Column (p) data	0	198-206	Column (p) data Format: see Field 6 above.
20	End of Record Code	"XQ"	208-211	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type I1, V1, A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
                                                                                                                  1
         1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1354,"LBIL","I1",8350.0,"Illinois Bell Admin Center, Inc.        ",     5432,     5432,     1358,     2716,
1377,"LBIL","I1",8373.0,"0                                       ",        0,        0,        0,        0,
1384,"LBIL","I1",8380.0,"N/A                                     ",     5432,     5432,     1358,     2716,

1 1         1         1         1         1         1         1         1         1         2         2
0 1         2         3         4         5         6         7         8         9         0         1
89012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Continuation of sample records:
     2716,    16296,     3197,     2242,     1404,     4035,        0,        0,        0,        0,"XQ"
        0,        0,        0,        0,        0,        0,        0,        0,        0,        0,"XQ"
     2716,    16296,     3197,     2242,     1404,     4035,        0,        0,        0,        0,"XQ"
```

RECORD TYPE V1 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES-PART II DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1419	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"V1"	13-16	Always contains the letter I capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	9350.0	18-23	Row number as identified on pages 16-19 of the accompanying Report Definition. Valid ranges: 9350.0 to 9450.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"Illinois Bell Admin Center, Inc." (spaces until pos. 66)	25-66	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: left justified and space filled. All fields must be populated. If there are no data applicable to an open field enter zero. Include quotation marks.
6	Column (c) data	3863	68-76	This field contains the data corresponding to column (c) as shown on the accompanying Report Definition. DO NOT override designated N/As. Format: right justified and space filled Enter -99999 all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	0	78-86	Column (d) data Format: see Field 6 above.
8	Column (e) data	-3863	88-96	Column (e) data Format: see Field 6 above.
9	Column (f) data	0	98-106	Column (f) data Format: see Field 6 above.
10	Column (g) data	1234	108-116	Column (g) data Format: see Field 6 above.

RECORD TYPE V1 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES PART II DATA RECORD(continued)

Field	Item	Example	Position	Description
11	Column (h) data	3567	118-126	Column (h) data Format: see Field 6 above.
12	Column (i) data	0	128-136	Column (i) data Format: see Field 6 above.
13	Column (j) data	4801	138-146	Column (j) data Format: see Field 6 above.
14	Column (k) data	3456	148-156	Column (k) data Format: see Field 6 above.
15	Column (l) data	2102	158-166	Column (l) data Format: see Field 6 above.
16	Column (m) data	1234	168-176	Column (m) data Format: see Field 6 above.
17	Column (n) data	6792	178-186	Column (n) data Format: see Field 6 above.
18	Column (o) data	34732	188-196	Column (o) data Format: see Field 6 above.
19	End of Record Code	"XQ"	198-201	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type V1, A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
                                                                                                                  1
         1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1419,"LBIL","V1",9350.0,"Illinois Bell Admin Center, Inc.        ",     3863,        0,    -3863,        0,
1442,"LBIL","V1",9373.0,"0                                       ",        0,        0,        0,        0,
1449,"LBIL","V1",9380.0,"N/A                                     ",     3863,        0,    -3863,        0,
```

```
1 1         1         1         1         1         1         1         1         1         2
0 1         2         3         4         5         6         7         8         9         0
89012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Continuation of sample records:
     1234,     3567,        0,     4801,     3456,     2101,     1234,     6792,    34732,"XQ"
        0,        0,        0,        0,        0,        0,        0,        0,        0,"XQ"
     1234,     3567,        0,     4801,     3456,     2101,     1234,     6792,    34732,"XQ"
```

RECORD TYPE A1 - ASSETS PURCHASED OR SOLD DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1484	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"A1"	13-16	Always contains the letter A capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8460.0	18-23	Row number as identified on pages 20-21 of the accompanying Report Definition. Valid ranges: 8460.0 to 8550.0 Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"Ameritech Service, Inc." (Spaces until pos 66)	25-66	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: left justified and space filled. All fields must be populated. If there are no data applicable to an open field enter zero. Include quotation marks.
6	Column (c) data	5432	68-76	This field contains the data corresponding to column (c) as shown on the accompanying Report Definition. Format: right justified and space filled Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	4321	78-86	Column (d) data Format: see Field 6 above.
8	Column (e) data	432	88-96	Column (e) data Format: see Field 6 above.
9	Column (f) data	234	98-106	Column (f) data Format: see Field 6 above.

RECORD TYPE A1 - ASSETS PURCHASED OR SOLD DATA RECORD (continued)

Field	Item	Example	Position	Description
10	Column (g) data	10419	108-116	Column (g) data Format: see Field 6 above.
11	End of Record Code	"XQ"	118-121	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period diffes materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type A1, S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
                                                                                                                  1
         1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1484,"LBIL","A1",8460.0,"Ameritech Service, Inc.                    ",     5432,     4321,      432,      234,
1497,"LBIL","A1",8473.0,"0                                          ",        0,        0,        0,        0,
1524,"LBIL","A1",8500.0,"N/A                                        ",     5432,     4321,      432,      234,

1 1         1
0 1         2
89012345678901
Continuation of sample records:
    10419,"XQ"
        0,"XQ"
    10419,"XQ"
```

RECORD TYPE S1- SERVICES PURCHASED OR SOLD DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1566	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"S1"	13-16	Always contains the letter S capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8570.0	18-23	Row number as identified on pages 22-23 of accompanying Report Definition. Valid ranges: 8570.0 to 8660.0 Format: right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Ameritech Service, Inc." (Spaces until pos 66)	25-66	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: left justified and space filled. All fields must be populated. If there are no data applicable to an open field enter zero. Include quotation marks.
6	Column (c) data	2716	68-76	This field contains the data corresponding to column (c) as shown on the accompanying Report Definition. DO NOT override designated N/As. Format: right justified and space filled Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	5432	78-86	Column (d) data Format: see Field 6 above.
8	Column (e) data	2716	88-96	Column (e) data Format: see Field 6 above.

RECORD TYPE S1- SERVICES PURCHASED OR SOLD DATA RECORD (continued)

9	Column (f) data	60000	98-106	Column (f) data Format: see Field 6 above.
10	End of Record Code	"XQ"	108-111	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type S1, N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample records:
1566,"LBIL","S1",8570.0,"Ameritech Service, Inc.                ",    2716,    5432,    2716,   10864,"XQ"
1599,"LBIL","S1",8603.0,"0                                      ",       0,       0,       0,       0,"XQ"
1606,"LBIL","S1",8610.0,"N/A                                    ",    2716,    5432,    2716,   10864,"XQ"
```

RECORD TYPE N1- NET DEFERRED INCOME TAXES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1648	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"N1"	13-16	Always contains the letter N capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8670.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 8670.0 to 8860.0 Format: right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	21728	25-33	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other Fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (d) data	1234	35-43	Column (d) data Format: see Field 5 above.
7	Column (e) data	2345	45-53	Column (e) data Format: see Field 5 above.
8	Column (f) data	1234	55-63	Column (f) data Format: see Field 5 above.
9	Column (g) data	1234	65-73	Column (g) data Format: see Field 5 above.
10	Column (h) data	15678	75-83	Column (h) data Format: see Field 5 above.

RECORD TYPE N1- NET DEFERRED INCOME TAXES DATA RECORD (continued)

Field	Item	Example	Position	Description
12	End of Record Code	"XQ"	85-88	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type N1, R1, and C3 records) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1648,"LBIL","N1",8670.0,    21728,    1234,    2345,    1234,    1234,    15678,"XQ"
```

RECORD TYPE R1 - PENSION COST DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1684	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"R1"	13-16	Always contains the letter R capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	8870.0	18-23	Row number as identified on pages 27-30 of the accompanying Report Definition. Valid ranges: 8870.0 to 9201.0 Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers append .0 to the row number.
5	Column (b) data	21728 -OR- 12.00	25-33	This field contains the data corresponding to column (b) as shown on the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows where a field is designated by N/A. All other Fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	12716	35-43	Column (c) data Format: see Field 5 above
7	End of Record Code	"XQ"	45-48	Always contains the letter XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type R1, and C3 containing footnote text to explain the specific circumstances.

```
         1         2         3         4
1234567890123456789012345678901234567890123456789
Sample records:
1684,"LBIL","R1",8870.0,    21728,    12716,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1772	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1035	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s) or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the the confidential data appears. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested then enter " ". Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for the entire column(s), an entire table or the entire submission, enter 9999.0. If no confidential treatment is being requested then use 0.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	42-45	.....
9	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1772,"LBIL","C3",1035,"I    ",2001.0,"AB","AC","AD","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1773,"LBIL","C3",1056,"I    ",2215.1,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1774,"LBIL","C3",9999,"I    ",9999.0,"BB","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1775,"LBIL","C3",1279,"II   ", 730.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1776,"LBIL","C3",1318,"II   ", 790.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",

                                        - OR -

1772,"LBIL","C3",   0,"    ",   0.0,"  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"

                                        - OR -

"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F3 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1777	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F3"	13-16	Always contains the letter F capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1035	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to the entire column(s), an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to the entire column(s), an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AE"	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F3 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-44	The number of this particular footnote. Valid range: 1 to 999. Format: right justified and space filled.
9	Sequence Number	1	46-47	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (Spaces until pos. 105) "	49-105	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	107-110	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1777,"LBIL","F3",1035,"I   ",2001.0,"AE",  1, 1,"Footnote text for footnote 1                                  ","XQ"
1778,"LBIL","F3",1035,"I   ",2001.0,"AE",  1, 2,"continuation text for footnote 1                              ","XQ"
1779,"LBIL","F3",1035,"I   ",2001.0,"AE",  1, 3,"last line of footnote 1                                       ","XQ"
1780,"LBIL","F3",1056,"I   ",2215.1,"ZZ",  2, 1,"Footnote 2 pertains to all cols. of Table I row 2215.1 ","XQ"
1781,"LBIL","F3",9999,"I   ",9999.0,"BB",  3, 1,"Footnote 3 pertains to all rows of Table I column BB   ","XQ"
1782,"LBIL","F3",1279,"II  ", 730.0,"AC",  4, 1,"Footnote 4 pertains to Table II row 730 column AC      ","XQ"
```

RECORD TYPE E4- ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1783	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E4"	13-16	Always contains the letter E capitalized and the number 4 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1035	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE E4 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	42-45	.....
9	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
27	Footnote Number	1	137-139	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	141-144	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1783,"LBIL","E4",1035,"I   ",2001.0,"AE","AF",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1784,"LBIL","E4",1042,"I   ", 210.0,"AE","AF",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1785,"LBIL","E4",1056,"I   ",2215.1,"ZZ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1786,"LBIL","E4",9999,"I   ",9999.0,"BB",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1787,"LBIL","E4",1279,"II  ", 730.0,"AC",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890123456789012345678901234
Continuation of sample records:
  ",  ",  ",  ",  ",  ",  ",  ",  ",  ", 1,"XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ",  ", 0,"XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ",  ", 2,"XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ",  ", 3,"XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ",  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1788	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1788,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 characters per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4 or (4), NOT - 4.

2. Items that need not be reported because they do not apply are designated by N/A. If a "Public Version" report is filed, enter W/H in any numeric data field for which data is "Withheld". **DO NOT** override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. All other fields must be populated. If there are no data applicable to an open field enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all dollar amounts must be rounded to the nearest thousand dollars.

2. All percentage amounts (e.g., Expected Long Term Return On Assets), must be entered in percent and must be rounded to two places.

   Example: 12 2/3 percent should be entered as 12.67

3. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

E. **Page Layouts**

The page layout for this report are illustrated in the Form Section of the accompanying Report Definition. In addition, the following note must appear at the bottom of all pages, where applicable:

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE. SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

The paper report will consist of the following pages, in order:

	Illustrated in Report Definition Form on Page
Table I - Balance Sheet Accounts	3 thru 5
Table II - Income Statement Accounts	6 thru 9
Table III - Statement of Cash Flows	10 thru 11
Table IV.A - Investments in Affiliates and Other Companies-Part I	12 thru 15
Table IV.B - Investments in Affiliates and Other Companies-Part II	16 thru 19
Table V - Analysis of Assets Purchased From or Sold To Affiliates	20 thru 21
Table VI - Analysis of Services Purchases From or Sold to Affiliates	22 thru 23
Table VII - Net Deferred Income Taxes	24 thru 26
Table VIII - Pension Cost	27 thru 30

	Illustrated in Paper Report Specs. on Page
The Confidential Treatment Table (at least one page and as many pages as needed)	3
The Footnote Table (at least one page and as many pages as needed)	4
The Erratum Table (for submission number 2 or higher, as many pages as needed)	5
The Certification Page	6

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/92

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From xxxx yyyy to xxxx yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	2001	AB,AC,AD
I	2215.1	AE,AF
I	ALL	BB
II	730	ALL
II	790	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

```
FCC REPORT 43-02                                          Approved by OMB
ARMIS USOA REPORT                                         3060-0395
                                                          Expires 10/31/92

COMPANY:      xxxxxxxxxxxxxxxxxxxxxxxxxxxxx               xxxxxxxxxxxx VERSION
STUDY AREA:   xxxxxxxxxxxxxxxxxxxxx                       SUBMISSION x
PERIOD:       From mmm yyyy to mmm yyyy                   FOOTNOTE TABLE
COSA:         xxxx                                        PAGE 1 OF x
                                FOOTNOTE TABLE

Table Row   Col FN# Footnote
---- ------ --- -- ---------------------------------------------------------
 (a)  (b)   (c) (d)    (e)
xxxx 1234.1 xxx  12 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:
   I 2001   AE    1 Footnote text for footnote 1
                    continuation text for footnote 1
                    last line of footnote 1
   I 2215.1 ALL   2 Footnote 2 pertains to all cols. of Table I row 2215.1
   I  ALL   BB    3 Footnote 3 pertains to all rows of Table I column BB
  II  730   AC    4 Footnote 4 pertains to Table II row 730 column AC

                                          -OR-
                    THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.
```

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/92

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line

sample entries:

I	2001	AE,AF	1
I	210	AE,AF	
I	2215.1	ALL	2
I	ALL	BB	3
II	730	AC	4

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic					BATR
	1.	the Chesapeake and Potomac telephone companies			CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWWV
	2.	Bell of PA and Diamond State			PDTC
		1. Diamond State Telephone		- Delaware	DSDE
		2. Bell of Pennsylvania		- Pennsylvania	PAPA
	3.	New Jersey Bell			
		1. New Jersey Bell		- New Jersey	NJNJ
Bell South					BSTR
		1. Southern Bell			SBTC
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
		2. South Central Bell			SCTC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Company					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except Kansas		SWAG
U.S. West Communications, Inc.					USTR
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Central Telephone Total					CETC
		1. Central of Florida		- Florida	CEFL
		2. Central of Illinois		- Illinois	CEIL
		3. Central of Virginia		- Virginia	CEVA
		4. Central Telephone Company			CETO
				- North Carolina	CENC
				- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky				CBTC
Commonwealth Telephone Co.				- Pennsylvania	CWTC
Continental Telephone Company					COTC
		1. Contel of Alabama		- Alabama	COAL
		2. Contel of Arkansas		- Arkansas	COAR
		3. Contel of Arizona		- Arizona	COAZ
		4. Contel of California		- California	COCA
		5. Contel of Georgia		- Georgia	COGA
		6. Contel of Idaho		- Idaho	COID
		7. Contel of Illinois		- Illinois	COIL
		8. Contel of Indiana		- Indiana	COIN
		9. Contel of Iowa		- Iowa	COIA
		10. Contel of Kansas		- Kansas	COKS
		11. Contel of Kentucky		- Kentucky	COKY
		12. Contel of Maine		- Maine	COME
		13. Contel of Minnesota		- Minnesota	COMN
		14. Contel of Missouri		- Missouri	COMO
		15. Contel of Nebraska		- Nebraska	CONE
		16. Contel of Nevada		- Nevada	CONV
		17. Contel of North Carolina		- North Carolina	CONC
		18. Contel of North Dakota		- North Dakota	COND
		19. Contel of New Hampshire		- New Hampshire	CONH
		20. Contel of New Mexico		- New Mexico	CONM
		21. Contel of New York		- New York	CONY
		22. Contel of Oklahoma		- Oklahoma	COOK
		23. Contel of Oregon		- Oregon	COOR
		24. Contel of Pennsylvania		- Pennsylvania	COPA
		25. Contel of South Carolina		- South Carolina	COSC
		26. Contel of South Dakota		- South Dakota	COSD
		27. Contel of Texas		- Texas	COTX
		28. Contel of Utah		- Utah	COUT
		29. Contel of Virginia		- Virginia	COVA
		30. Contel of Vermont		- Vermont	COVT
		31. Contel of Washington		- Washington	COWA
		32. Contel of Wisconsin		- Wisconsin	COWI
		33. Contel of West Virginia		- West Virginia	COWV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
GTE Telephone Operating Companies					GTTC
		1. GTE California Inc.		- California	GTCA
		2. GTE Florida Inc.		- Florida	GTFL
		3. GTE Northwest Inc.			GTNW
			- Idaho & Montana		GTNA
				- Idaho	GTID
				- Montana	GTMT
			- OR, WA & Wstn CA		GTNB
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
		4. GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Tennessee	GTTN
				- Virginia	GTVA
				- West Virginia	GTWV
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
			- Iowa & Minnesota		GTIM
				- Iowa	GTIA
				- Minnesota	GTMI
				- Michigan	GTMN
				- Missouri	GTMO
				- Nebraska (also serving Kansas)	GTNE
				- Ohio	GTOH
				- Pennsylvania	GTPA
				- Wisconsin	GTWI
				- General Offices	GTGO
		7. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
		8. GTE Alaska		- Alaska	GTAK
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Rochester Telephone Corporation				- New York	RTNY
	1.	Ausable Valley Telephone		- New York	AUNY
	2.	Breezewood Telephone		- Pennsylvania	BTPA
	3.	CC&S Telco		- Michigan	CCMI
				- Ohio	CCOH
	4.	Canton Telephone		- Pennsylvania	CTPA
	5.	Enterprise Telephone		- Pennsylvania	ETPA
	6.	Highland Telephone		- New York	HTNY
	7.	Inland Telephone		- Illinois	ITIL
	8.	Lakeshore Telephone		- Wisconsin	LTWI
	9.	Lakeside Telephone		- Illinois	LTIL
	10.	Lakewood Telephone		- Pennsylvania	LTPA
	11.	Monroeville Telephone		- Alabama	MTAL
	12.	Mt. Pulaski Telephone		- Illinois	MPIL
	13.	Midland Telephone		- Illinois	MTIL
	14.	Midway Telephone		- Michigan	MTMI
	15.	Mondovi Telephone		- Wisconsin	MTWI
	16.	Ontonogan Telephone		- Michigan	OTMI
	17.	Oswayo River Telephone		- Pennsylvania	ORPA
	18.	Prairie Telephone		- Illinois	PTIL
	19.	S & A Telephone		- Kansas	SAKS
	20.	Senca Gorham Telephone		- New York	SGNY
	21.	Sylvan Lake Telephone		- New York	SLNY
	22.	Southland Telephone		- Alabama	STAL
				- Florida	STFL
	23.	Schuyler Telephone		- Idaho	STIA
				- Illinois	STIL
	24.	Thorntown Telephone		- Indiana	TTIN
	25.	Urban Telephone		- Wisconsin	UTWI
Southern New England Telephone				- Connecticut	SNCT
United Telephone System					UTTC
	1.	United Tel. Co. of Florida		- Florida	UTFL
	2.	United Tel. Co. of Indiana		- Indiana	UTIN
	3.	United Tel. Co. of Kansas		- Kansas	UTKS
	4.	United Tel. Co. of Minn.		- Minnesota	UTMN
	5.	United Tel. Co. of Missouri		- Missouri	UTMO
	6.	United Tel. Co. of Neb.		- Nebraska	UTNE
	7.	United Tel. Co. of N. Jer.		- New Jersey	UTNJ
	8.	Carolina Tel. and Tel. Co.		- North Carolina	UTNC
	9.	United Tel. Co. of Ohio		- Ohio	UTOH
	10.	United Tel. Co. of Oregon		- Oregon	UTOR
	11.	United Tel. Co. of Penn.		- Pennsylvania	UTPA
	12.	United Tel. Co. of S. C.		- South Carolina	UTSC

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
	13.	United Tel. Co. of Texas		- Texas	UTTX
	14.	United Tel. Co. of Wash.		- Washington	UTWA
	15.	United Tel. Co. of Wyoming		- Wyoming	UTWY
	16.	United Inter-Mountain Tel. Co.			UTIM
				- Tennessee	UTTN
				- Virginia	UTVA
Total Independent Companies					TICO
AT&T Communications					ATTC
Total Industry					TOTL

APPENDIX E

This document provides the instructions for FCC Report 43-08, the ARMIS Operating Data Report, which was adopted by the Bureau in AAD 91-46. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-08, the ARMIS Operating Data Report, to the Commission.

B. General Information

1. FCC Report 43-08 was adopted by the Bureau in Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, AAD 91-46. The report is prescribed for every local exchange carrier with operating revenues of $100 million or more.

2. Affected carriers shall file by April 1 of each year the report for the previous calendar year. The initial filing of this edition of the Operating Data Report will be filed by May 1992 and will contain data for the calendar year 1991.

3. The report shall be filed on an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-08, which identifies the filing as the ARMIS Operating Data Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

C. **Data Items That Are "Not Available", "Withheld", or Irretrievable"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required operating company reports, a carrier submits a report which combines data for more than one operating company, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. Items that are not being reported because the filing carrier has a waiver or has applied for a waiver are designated as "Irretrievable."

4. See paragraph C.5 in the Automated Report Specifications and paragraph C.2 in the Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-08 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, Downtown Copy Center at 1114 21st Street, N.W., Washington, D.C. 20036 or delivered to Downtown Copy Center in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary 1919 M Street, N.W., Room 222 Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W., Room 812 Washington, D.C. 20554	1	1	1	1	1
FCC Common Carrier Bureau Industry Analysis Division 1250 23rd Street, N.W., Room 100 Washington, D. C. 20554	1	1	1	-	1
Downtown Copy Center 1919 M Street, N.W., Room 246 Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary 1919 M Street, N.W., Room 222 Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W., Room 812 Washington, D.C. 20554	1	1	1
FCC Common Carrier Bureau Industry Analysis Division 1250 23rd Street, N.W., Room 100 Washington, D.C. 20554	1	-	1
Downtown Copy Center 1919 M Street, N.W., Room 246 Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from the procedures prescribed. Include an explanatory footnote for all items designated as "Irretrievable."

3. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications and the Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-08. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications and the Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-08 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 30 of the attached Report Definition.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-08, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. **Public Information**

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-08 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-08 may be obtained from the FCC's contractor for public records duplication, Downtown Copy Center at 1919 M Street, N.W., Washington, D.C., 20036, Telephone (202) 452-1422.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
xxxx-zzzz
Expires xx/xx/xx

Estimated Average Burden Hours Per Response: 160 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-08, the ARMIS Operating Data Report, and lists the company level statistical data which must be provided annually. It contains the following:

	Pages
State Row Numbers and Codes - Reference Table	2 & 3
Table I.A - Outside Plant Statistics - Cable & Wire Facilities	4 thru 6
Table I.B - Outside Plant Statistics - Other	7 & 8
Table II - Switched Access Lines In Service By Technology	9 & 10
Table III - Access Lines In Service By Customer	11 & 12
Table IV - Telephone Calls	13
Row and Column Descriptions	14 thru 29
Certification	30

To convert miles to kilometers, compute total miles, multiply by 1.6093, and then round to the nearest whole number. Internal calculations should retain, where applicable, at least 4 decimal places of accuracy; compute totals and then round to the nearest whole number before applying weighting factors. Final results (in kilometers) must be rounded to the nearest whole number, but report any non-zero entry that is less than 1 kilometer as 1 kilometer. Telephone calls and minutes must be rounded to the nearest thousand. All other amounts must be reported in actual units.

Items which need not be reported because they do not apply are designated by N/A. Items that are not being reported because the carrier has a waiver or has applied for a waiver are designated by I/T. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Operating Data Report collects annual statistical data in a consistent format and is essential to the FCC to monitor network growth, usage, and reliability. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 160 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

STATE ROW NUMBERS AND CODES
REFERENCE TABLE

State or Territory	Row Number	Code
Alabama	0110	AL
Alaska	0120	AK
Arizona	0130	AZ
Arkansas	0140	AR
California	0150	CA
Colorado	0160	CO
Connecticut	0170	CT
Delaware	0180	DE
District of Columbia	0190	DC
Florida	0200	FL
Georgia	0210	GA
Hawaii	0220	HI
Idaho	0230	ID
Illinois	0240	IL
Indiana	0250	IN
Iowa	0260	IA
Kansas	0270	KS
Kentucky	0280	KY
Louisiana	0290	LA
Maine	0300	ME
Maryland	0310	MD
Massachusetts	0320	MA
Michigan	0330	MI
Minnesota	0340	MN
Mississippi	0350	MS
Missouri	0360	MO
Montana	0370	MT
Nebraska	0380	NE
Nevada	0390	NV
New Hampshire	0400	NH
New Jersey	0410	NJ
New Mexico	0420	NM
New York	0430	NY
North Carolina	0440	NC
North Dakota	0450	ND
Ohio	0460	OH
Oklahoma	0470	OK
Oregon	0480	OR
Pennsylvania	0490	PA
Rhode Island	0500	RI
South Carolina	0510	SC

State or Territory	Row Number	Code
South Dakota	0520	SD
Tennessee	0530	TN
Texas	0540	TX
Utah	0550	UT
Vermont	0560	VT
Virginia	0570	VA
Washington	0580	WA
West Virginia	0590	WV
Wisconsin	0600	WI
Wyoming	0610	WY
Puerto Rico	0710	PR
Virgin Islands	0720	VI
Ocean Cable	0810	OC
Total	0910	TO

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx

Expires xx/xx/xx

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxxx VERSION

STUDY AREA: xxxxxxxxxxxxxxxxxxxxx

SUBMISSION x

PERIOD: From mmmm yyyy To mmmm yyyy

TABLE I.A

COSA: xxxx

TABLE I.A - OUTSIDE PLANT STATISTICS-CABLE AND WIRE FACILITIES

Row No.	State or Terr (a)	Code (b)	Km of Aerial Wire (c)	Aerial Cable: Sheath Km of Copper (d)	Aerial Cable: Sheath Km of Fiber (e)	Underground Cable: Sheath Km of Copper (f)	Underground Cable: Sheath Km of Fiber (g)	Buried Cable: Sheath Km of Copper (h)	Buried Cable: Sheath Km of Fiber (i)	Submarine Cable: Sheath Km of Copper (j)	Submarine Cable: Sheath Km of Fiber (k)
EXAMPLE:											
0240	Illinois	IL									
0910	Total	TO									

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I.A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE I.A - OUTSIDE PLANT STATISTICS-CABLE AND WIRE FACILITIES

Row No.	State or Terr (a)	Code (b)	Deep Sea Cable: Sheath Km of Copper (l)	Deep Sea Cable: Sheath Km of Fiber (m)	Intrabldg Ntwk Cable: Sheath Km of Copper (n)	Intrabldg Ntwk Cable: Sheath Km of Fiber (o)	Total Cable: Sheath Km of Copper (p)	Total Cable: Sheath Km of Fiber (q)	Km of Fiber in Cable: Fiber Km Equipped (Lit) (r)	Km of Fiber in Cable: Total Fiber Km Deployed (Lit & Dark) (s)
EXAMPLE:										
0240	Illinois	IL								
0910	Total	TO								

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08
ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I.A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE I.A - OUTSIDE PLANT STATISTICS-CABLE AND WIRE FACILITIES

Row No.	State or Territory (a)	Code (b)	Km of Copper Wire in NonCoax Cable (t)	Equipped Km of Tube in Coax Cable (u)	Number of Poles (v)	Conduit System	
						Trench Km (w)	Duct Km (x)
EXAMPLE:							
0240	Illinois	IL					
0910	Total	TO					

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I.B

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I.B - OUTSIDE PLANT STATISTICS-OTHER

			Radio Relay System				
				Km of One-Way Radio Channel		Km of Telephone Channel	
Row No.	State or Territory (ba)	Code (bb)	Km of Terrestrial System (bc)	Km of One-Way Terrestrial Radio Channel (bd)	Terrestrial Km of One-Way Satellite Radio Channel (be)	Analog (4Khz or Equiv) (bf)	Digital (64 Kb/S or Equiv) (bg)
EXAMPLE:							
0240	Illinois	IL					
0910	Total	TO					

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx

Expires xx/xx/xx

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxxx VERSION

STUDY AREA: xxxxxxxxxxxxxxxxxxxx

SUBMISSION x

PERIOD: From mmm yyyy To mmm yyyy

TABLE I.B

COSA: xxxx

TABLE I.B - OUTSIDE PLANT STATISTICS-OTHER

Row No.	State or Territory (ba)	Code (bb)	Total Equipped Local Loop Circuit Km (Cable and Microwave Systems) Analog (4Khz or Eq) (bh)	Digital (64Kb/S or Eq) (bi)	Video (bj)	Total Equipped Interoffice Circuit Km (Cable and Microwave Systems) Analog (4Khz or Eq) (bk)	Digital (64Kb/S or Eq) (bl)	Video (bm)
EXAMPLE:								
0240	Illinois	IL						
0910	Total	TO						

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08
ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE II - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY

			Analog (4Khz or Equivalent)			Digital (64Kb/Sec or Equivalent)				
Row No.	State or Terr (ca)	Code (cb)	Main Access Lines (cc)	PBX and Centrex Trunks (cd)	Centrex Extensions (ce)	Main Access Lines (cf)	PBX and Centrex Trunks (cg)	Centrex Extensions (ch)	Other Switched AccessLines (ci)	Total Switched AccessLines (cj)
EXAMPLE:										
0240	Illinois	IL								
0910	Total	TO								

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE II - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY

Row No.	State or Terr (ca)	Code (cb)	Central Office Switches Exc Remotes (ck)	Remote Switches (cl)	Total Central Office Switches (cm)	Basic Rate ISDN Cntrl Channels (cn)	PrimaryRate ISDN Cntrl Channels (co)
EXAMPLE:							
0240	Illinois	IL					
0910	Total	TO					

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE III

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE III - ACCESS LINES IN SERVICE BY CUSTOMER

Row No.	State or Terr (da)	Code (db)	Business Access Lines: Analog Single Line (dc)	Business Access Lines: Analog Multi Line (dd)	Business Access Lines: Digital (de)	Public Access Lines (df)	Res Access Lines: Analog (dg)	Res Access Lines: Digital (dh)	Mobile Access Lines (di)	Total Switched Access Lines (dj)
EXAMPLE:										
0240	Illinois	IL								
0910	Total	TO								

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE III

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE III - ACCESS LINES IN SERVICE BY CUSTOMER

Row No.	State or Terr (da)	Code (db)	Special Access Lines (non-switched) Analog (dk)	Special Access Lines (non-switched) Digital (dl)	Total Access Lines (Switched & Special) (dm)
EXAMPLE:					
0240	Illinois	IL			
0910	Total	TO			

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

FCC Report 43-08

ARMIS OPERATING DATA REPORT

xxxx-xxxx

Expires xx/xx/xx

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxx VERSION

STUDY AREA: xxxxxxxxxxxxxxxxxxxxx

SUBMISSION x

PERIOD: From mmmm yyyy To mmmm yyyy

TABLE IV

COSA: xxxx

TABLE IV - TELEPHONE CALLS

(Amounts in Thousands)

Row No.	State or Terr (ea)	Code (eb)	Local Calls (ec)	IntraLATA Toll Calls Completed (Originating) (ed)	InterLATA Toll Calls Completed (Originating) Interstate (ee)	InterLATA Toll Calls Completed (Originating) Intrastate (ef)	InterLATA Toll Calls Completed (Originating) Total (eg)	InterLATA Billed Access Minutes (Originating and Terminating) Interstate (eh)	InterLATA Billed Access Minutes (Originating and Terminating) Intrastate (ei)	InterLATA Billed Access Minutes (Originating and Terminating) Total (ej)
EXAMPLE:										
0240	Illinois	IL								
0910	Total	TO								

(See State Row Numbers and Codes Reference Table for the row numbers and state codes applicable to your filing.)

TABLE I.A - OUTSIDE PLANT STATISTICS - CABLE AND WIRE FACILITIES

GENERAL INSTRUCTIONS

Table I.A requires the annual reporting of various cable and wire facility statistics by state as of December 31 of the calendar year covered by the report. Report all solely owned plant and the respondent's proportionate interest in jointly owned plant.

To convert miles to kilometers, compute total miles, multiply by 1.6093 and then round to the nearest whole number. Internal calculations should retain, where applicable, at least 4 decimal places of accuracy; compute totals and then round to the nearest whole number before applying weighting factors. Final results should be rounded to the nearest whole number, but report any non-zero entry that is less than 1 kilometer as 1 kilometer.

Footnotes should be included in the Footnote Table liberally, especially where the reporting company perceives any ambiguities in the data provided, where procedures or internal sources associated with data preparation have changed, or where required data are available only in part or on an estimated basis.

ROW INSTRUCTIONS

Each row represents a state, district or territory in which the reporting company has cable and wire facilities. Include only those rows with data to be reported, but complete every item in those rows. Include a row for total company data, even if there is only one state row. See the State Row Numbers and Codes Reference Table for assigned row numbers and codes.

COLUMN DESCRIPTIONS

Each column represents a category of cable and wire facilities. In columns (d) through (q) a cable containing only copper, coaxial, or other metallic conductors should be classified as copper, but a cable containing both copper and fiber should be classified as fiber. In all columns include both local loop and interoffice facilities where applicable.

COLUMN

(a) State or Territory - The name of one of the fifty U.S. states or one of the following: District of Columbia, Puerto Rico, Virgin Islands, Ocean Cable, or Total.

(b) State or Territory Code - The two-letter Postal Abbreviation for the state or territory. Use "OC" for Ocean Cable and "TO" for Total Company.

(c) Kilometers of Aerial Wire - Consists of both open and insulated single or multipaired covered wire. Include both local loop and interoffice facilities where applicable.

Aerial Cable - Cables that are attached to utility poles. The cables in this environment can have metallic conductors or non-metallic fibers. Include both local loop and interoffice facilities where applicable.

(d) Sheath Kilometers of Copper Aerial Cable - Sheath kilometers of aerial cable with copper or other metallic conductors.

(e) Sheath Kilometers of Fiber Aerial Cable - Sheath kilometers of aerial cable with non-metallic fibers.

Underground Cable - Cables that are located in conduit and manholes. The cables in this environment can contain conductors that are metallic copper or non-metallic optical fibers. Include both local loop and interoffice facilities where applicable.

(f) Sheath Kilometers of Copper Underground Cable - Sheath kilometers of underground cable containing copper or other metallic conductors.

(g) Sheath Kilometers of Fiber Underground Cable - Sheath kilometers of underground cable containing non-metallic fibers.

Buried Cable - This cable account consists of cables that are buried directly below the ground and not placed in conduit structure. The cables in this environment can have conductors that are metallic copper or non-metallic optical fibers. Include both local loop and interoffice facilities where applicable.

(h) Sheath Kilometers of Copper Buried Cable - Sheath kilometers of buried cable with copper or other metallic conductors.

(i) Sheath Kilometers of Fiber Buried Cable - Sheath kilometers of buried cable with non-metallic fibers.

Submarine Cable - Cables that are submerged and cross large bodies of water. Cables in this environment are laid directly on the bottom and not enclosed within a protective cover such as conduit. The cables in this environment can have transmission paths comprised of either metallic conductors or non-metallic optical fibers. Include both local loop and interoffice facilities where applicable.

(j) Sheath Kilometers of Copper Submarine Cable - Sheath kilometers of submarine cable with copper or other metallic conductors.

(k) Sheath Kilometers of Fiber Submarine Cable - Sheath kilometers of submarine cable with non-metallic fibers.

Deep Sea Cable - Cables that are designed for use in deep sea water such as the Atlantic or Pacific Ocean. Include both local loop and interoffice facilities where applicable.

(l) Sheath Kilometers of Copper Deep Sea Cable - Sheath kilometers of deep sea cable with copper or other metallic conductors.

(m) Sheath Kilometers of Fiber Deep Sea Cable - Sheath kilometers of deep sea cable with non-metallic fibers.

Intrabuilding Network Cable - Cables located on the carrier's side of the demarcation point or standard network interface inside subscribers' buildings or between buildings on one customer's same premises. Include both local loop and interoffice facilities where applicable.

(n) Sheath Kilometers of Copper Intrabuilding Network Cable - Sheath kilometers of intrabuilding network cable with copper or other metallic conductors.

(o) Sheath Kilometers of Fiber Intrabuilding Network Cable - Sheath kilometers of intrabuilding network cable with non-metallic fibers.

Total Cable - All cables, including wire, coaxial cables, and fiber. Include both local loop and interoffice facilities where applicable.

(p) Sheath Kilometers of Total Copper Cable - Sheath kilometers of total cable with copper or other metallic conductors. This is the sum of columns (d), (f), (h), (j), (l) and (n).

(q) Sheath Kilometers of Total Fiber Cable - Sheath kilometers of total cable with non-metallic fibers. This is the sum of columns (e), (g), (i), (k), (m) and (o).

Kilometers of Fiber in Cable - Fiber optic cables contain thin filaments of glass or other transparent material enclosed in a protective sheath through which light beams may be transmitted. Include both local loop and interoffice facilities where applicable.

(r) Fiber Kilometers Equipped with Electronics (Lit) - The portion of fiber kilometers that are equipped by the reporting company with opto-electronics for transmission use or are ready for use at the DS-3 level. (Do not provide total sheath kilometers.)

(s) – Total Fiber Kilometers Deployed (Lit and Dark) - Total deployed fiber measurement calculated as the weighted sum of the number of optical fibers in the sheath for each cable multiplied by the associated sheath kilometers. Provide the total deployed fiber kilometers, not just the portion in service or equipped with carrier equipment.

(t) Kilometers of Copper Wire in Non-Coaxial Cable - The weighted sum of the number of copper wires in each non-coaxial cable multiplied by the associated sheath kilometers. The wires must be capable of supporting present or future telecommunications traffic.

(u) Equipped Kilometers of Tube in Coaxial Cable - The weighted sum of the number of tubes equipped with electronics in each cable multiplied by the associated coaxial sheath kilometers. Provide only the number of tube kilometers of coaxial equipped with electronics, not total sheath kilometers. Include both local loop and interoffice facilities where applicable.

(v) Number of Poles - The sum of solely owned and portions of jointly owned poles. Include both local loop and interoffice facilities where applicable.

Conduit System - Pipe placed in the ground (which is reusable in place) through which cables are pulled. Include both local loop and interoffice facilities where applicable.

(w) Trench Kilometers - Length of the ditch that contains the duct.

(x) Duct Kilometers - The number of ducts times the trench kilometers.

TABLE I.B - OUTSIDE PLANT STATISTICS - OTHER

GENERAL INSTRUCTIONS

Table I.B requires the annual reporting of various outside plant statistics by state as of December 31 of the calendar year covered by the report. Report all solely owned plant and the respondent's proportionate interest in jointly owned plant.

To convert miles to kilometers, compute total miles, multiply by 1.6093 and then round to the nearest whole number. Internal calculations should retain, where applicable, at least 4 decimal places of accuracy; compute totals and then round to the nearest whole number before applying weighting factors. Final results should be rounded to the nearest whole number, but report any non-zero entry that is less than 1 kilometer as 1 kilometer.

Footnotes should be included in the Footnote Table liberally, especially where the reporting company perceives any ambiguities in the data provided, where procedures or internal sources associated with data preparation have changed, or where required data are available only in part or on an estimated basis.

ROW INSTRUCTIONS

Each row represents a state, district or territory in which the reporting company has outside plant facilities. Include only those rows with data to be reported, but complete every item in those rows. Include a row for total company data, even if there is only one state row. See the State Row Numbers and Codes Reference Table for assigned row numbers and codes.

COLUMN DESCRIPTIONS

Each column represents a category of outside plant. In columns (bc) through (bg) include local loop and interoffice radio facilities where applicable. In columns (bh) through (bj) include local loop cable and microwave facilities. In columns (bk) through (bm) include interoffice cable and microwave facilities.

COLUMN

(ba) State or Territory - The name of one of the fifty U.S. states or one of the following: District of Columbia, Puerto Rico, Virgin Islands, Ocean Cable, or Total.

(bb) State or Territory Code - The two-letter Postal Abbreviation for the state or territory. Use "OC" for Ocean Cable and "TO" for Total Company.

- Radio Relay System - Equipment that is used to transmit and receive radio waves (above 890 mhz) through space over which communications channels are provided. In columns (bc) through (bg) report the aggregate number of kilometers of system or channel, as appropriate, between the individual stations or radio-relay systems. Include both local loop and interoffice facilities where applicable. If your radio repeater or terminal location interfaces with a radio facility in another company, only include the distance from your facility to the border of your company. If two of your interconnected radio repeaters or terminal locations form a radio path that crosses the territory of another company, include the entire distance between the facilities.

(bc) Kilometers of Terrestrial System - Total absolute distance between repeater sites making up microwave radio systems above 890 mhz. Do not include satellite systems in this total.

Kilometers of One-Way Radio Channel - Total kilometers of one-way radio channel above 890 mhz used for message, special services, video, or protection. A radio channel consists of a single one-way link using a microwave transmitter and receiver. The radio channel distance is the sum of the lengths of each one-way link associated with a transmitter-receiver pair. Where applicable, multiply the distance by 2 to account for two-way transmission.

(bd) Kilometers of One-Way Terrestrial Radio Channel - Total km of one-way radio channel above 890 mhz used in terrestrial radio systems.

(be) Terrestrial Kilometers of One-Way Satellite Radio Channel - Total terrestrial kilometers of one-way radio channel above 890 mhz used in satellite radio systems, calculated as the terrestrial distance between the receiver and transmitter terminal locations.

Kilometers of Telephone Channel - Number of equivalent analog or digital telephone circuit kilometers that are equipped and on radio systems above 890 mhz.

(bf) Kilometers of Analog Telephone Channel (4Khz or Equivalent) - Number of 4khz or equivalent analog telephone circuit kilometers that are equipped and on radio systems above 890 mhz. This value is the weighted sum of the number of equivalent analog circuits on each link times the length of the link.

(bg) Kilometers of Digital Telephone Channel (64Kb/Sec or Equivalent) - Number of 64kb/sec or equivalent digital telephone circuit kilometers that are equipped and on radio systems above 890 mhz. This value is the weighted sum of the number of equivalent digital circuits on each link times the length of the link. In the case of radio systems carrying DS-1 channels for which DS-1 utilization is not known, calculate the weighted sum of the number of DS-1's on each link times the length of the link, round the result to the nearest whole kilometer, and multiply by 24.

– Total Equipped Local Loop Circuit Kilometers (Cable and Microwave Systems) - Total equivalent telephone grade circuit kilometers in carrier local loop plant. Include both cable and microwave facilities.

(bh) Equipped Local Loop Analog (4Khz or Equivalent) Circuit Kilometers - Includes open wire, paired cable (K, N1, N2, N3, N4, ON, ON/K), microwave radio (TL, TM, TD2, TD3), and other analog microwave in carrier local loop plant. Report in equivalent 4khz circuit kilometers.

(bi) Equipped Local Loop Digital (64Kb/Sec or Equivalent) Circuit Kilometers - Includes lightguide (fiber) cables, digital subscriber paired cable (T1, T1C, T1D, T2), and microwave radio (DR11-40, other digital microwave) in carrier local loop plant. Report as equivalent 64kb/sec circuit kilometers. This may be calculated by summing unrounded DS-1 kilometers, rounding the total to the nearest kilometer, and weighting the result by 24.

(bj) Equipped Local Loop Video Circuit Kilometers - Kilometers of derived video channel in carrier local loop plant.

Total Equipped Interoffice Circuit Kilometers (Cable and Microwave Systems) - Total equivalent telephone grade circuit kilometers in interoffice carrier plant. Include both cable and microwave facilities.

(bk) Equipped Interoffice Analog (4Khz or Equivalent) Circuit Kilometers - Includes open wire, paired cable (K, N1, N2, N3, N4, ON, ON/K), microwave radio (TL, TM, TD2, TD3), and other analog microwave in interoffice carrier plant. Report in equivalent 4khz circuit kilometers.

(bl) Equipped Interoffice Digital (64Kb/Sec or Equivalent) Circuit Kilometers - Includes lightguide (fiber) cables, digital subscriber paired cable (T1, T1C, T1D, T2), and microwave radio (DR11-40, other digital microwave) in interoffice carrier plant. Report as equivalent 64kb/sec circuit kilometers. This may be calculated by summing unrounded DS-1 kilometers, rounding the total to the nearest kilometer, and weighting the result by 24.

(bm) Equipped Interoffice Video Circuit Kilometers - Kilometers of derived video channel in interoffice carrier plant.

TABLE II - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY

GENERAL INSTRUCTIONS

Table II requires the annual reporting of central office switches and switched access line statistics by state as of December 31 of the calendar year covered by the report.

Include access lines associated with switched services only. Include WATS and "WATS like" access lines, as well as 800 and "800 like" access lines, but do **NOT** include official/company circuits in the access line counts. Provide a footnote if this has been done differently in the past. Do not include in Table II circuits that provide access to an interexchange carrier. Do not include in Table II any special access lines; all special access lines or lines associated with non-switched services should be included in Table III, column (dk) or (dl).

Footnotes should be included in the Footnote Table liberally, especially where the reporting company perceives any ambiguities in the data provided, where procedures or internal sources associated with data preparation have changed, or where required data are available only in part or on an estimated basis.

ROW INSTRUCTIONS

Each row represents a state, district or territory in which the reporting company has switched access lines. Include only those rows with data to be reported, but complete every item in those rows. Include a row for total company data, even if there is only one state row. See the State Row Numbers and Codes Reference Table for assigned row numbers and codes.

COLUMN DESCRIPTIONS

Each column represents a category of switched access lines, central office switches, or ISDN control channels.

COLUMN

(ca) State or Territory - The name of one of the fifty U.S. states or one of the following: District of Columbia, Puerto Rico, Virgin Islands, or Total.

(cb) State or Territory Code - The two-letter Postal Abbreviation for the state or territory. Use "TO" for Total Company.

- Analog Switched Access Lines (4Khz or Equivalent) - Switched network access lines and equivalent 4khz analog access circuits or trunks. This will include access lines from a digital switch if the lines themselves are not terminated at the customer's premises as digital lines.

(cc) Main Analog Access Lines (4Khz or Equivalent) - Total analog switched network access lines excluding PBX Trunks, Centrex-CO lines, and Centrex-CU Trunks, Hotel/Motel LD Trunks, and Multi-Line Semi-Public Lines. Provide the number of analog 4khz or equivalent access lines connecting to single or multiline telephones.

(cd) Analog PBX and Centrex Access Trunks (4Khz or Equivalent) - Equivalent 4khz analog access circuits or trunks between the central office and a customer location PBX or Centrex; service is provided by equipment located on customer-controlled space including Centrex-CU Trunks, PBX Trunks, Hotel/Motel LD Trunks, and Multi-Line Semi-Public Lines.

(ce) Analog Centrex Extensions (4Khz or Equivalent) - Equivalent 4khz analog circuits connecting a Centrex or PBX on telephone company premises to telephones on the customer's premises; service is provided by equipment on telephone company owned or leased space including Centrex-CO Lines.

Digital Switched Access Lines (64Kb/Sec or Equivalent) - Switched network access lines and equivalent 64kb/sec (or 56kb/sec) digital access circuits or trunks. To be classified as digital, the access lines must be terminated at the customer end as digital lines or be available for use by the customer as digital lines. This will not include access lines from a digital switch if the lines themselves are not terminated at the customer's premises as digital lines.

(cf) Main Digital Access Lines (64Kb/Sec or Equivalent) - The 64kb/sec or 56kb/sec or ISDN B channels or other equivalent communications channels of digital subscriber lines as defined above that are circuit switched and can carry either voice or data. Do not include access lines connecting to a customer location PBX or Centrex.

(cg) Digital PBX and Centrex Access Trunks (64Kb/Sec or Equivalent) - The number of 64kb/sec or equivalent digital lines terminated on a customer location PBX and/or Centrex. Include Centrex-CU lines.

(ch) Digital Centrex Extensions (64Kb/Sec or Equivalent) - The number of 64kb/sec or equivalent digital circuits connecting a Centrex or PBX on telephone company premises to telephones on the customer's premises; service is provided by equipment on telephone company owned or leased space including ISDN based Centrex-CO Lines.

(ci) - Other Switched Access Lines - Provide, in terms of equivalent 4khz analog circuits or equivalent 64kb/sec digital circuits, the number of other switched access lines not included in columns (cc) through (ch). Use a footnote to itemize the separate categories and amounts which are included here.

(cj) Total Switched Access Lines - The sum of columns (cc) through (ci). This should equal the amount reported in Table III column (dj).

Central Office Switches - Assemblies of equipment designed to establish connections between lines and trunks, including access tandems, local, class 5 switching machines, and any associated remotes. There may be more than one switch per central office or wire center. Switches designed exclusively for operator services are not included in columns (ck) through (cm). If more than one switch is housed in a single building or structure, be sure to count each switch separately. Do not separately count each three-digit telephone number prefix as a separate switch.

(ck) Central Office Switches Excluding Remotes - The amount in column (cm) minus the amount in column (cl) for each row.

(cl) Remote Switches - Generally described as a switching entity that has no connection to the facilities network except through one other (host) switching entity, that shares the processing capabilities of another switching system for certain control functions under the direction of the host central processor, and that can be controlled remotely by the host over a pair of dedicated data links. Include not only those remote switching entities that are equipped to operate in a stand alone fashion to be able to provide more limited service, but also those that are not so equipped.

(cm) Total Central Office Switches - The total number of local and access tandem switching entities. Tandem switching entities are used to connect local switching entities with local switching entities in other central offices, including those tandems that are designed exclusively to establish connections between trunks. This definition is consistent with the definition for Row 0110, - Total Switching Entities, in Table I of FCC Report 43-07, the ARMIS Infrastructure Report.

- ISDN Control Channels - The packet switched channels on digital subscriber lines (16kb/sec for basic rate access or 64kb/sec for primary rate access) that carry signaling messages and packet-switched user data. This information should be reported in terms of actual control channels rather than in 64kb/sec equivalents (as was requested for 1988 through 1990) and should not be included in the total reported in column (cj). Where ISDN services are provided, use column (cn) and (co) to show the number of 16kb/sec and 64kb/sec control channels. For similar services, provide the total number of control channels and indicate the types included in a footnote.

(cn) Basic Rate ISDN Control Channels - The number of basic rate (16kb/sec) ISDN control channels. Also include the number of control channels for similar services with a data rate lower than 16kb/sec, and indicate the types included in a footnote.

(co) Primary Rate ISDN Control Channels - The number of primary rate (64kb/sec) ISDN control channels. Also include the number of control channels for similar services with a data rate higher than 16kb/sec, and indicate the types included in a footnote.

TABLE III - ACCESS LINES IN SERVICE BY CUSTOMER

GENERAL INSTRUCTIONS

Table III requires the annual reporting of switched and special access line statistics by state as of December 31 of the calendar year covered by the report.

In Table III columns (dc) through (dj), report access lines associated with switched services, i.e., all equivalent 4khz or 64kb/sec access lines included in Table II columns (cc) through (cj). Report special access lines that provide access to an interexchange carrier in Table III column (dk) or column (dl).

Include WATS and "WATS like" access lines, as well as 800 and "800 like" access lines, but do **NOT** include official/company circuits in the access line counts. Provide a footnote if this has been done differently in the past. Analog access lines should be reported as 4khz equivalents. ISDN and other digital access lines should be reported as 64kb/sec equivalents. A fully equipped DS-1 line, for example, corresponds to 24 64kb/sec equivalents.

Footnotes should be included in the Footnote Table liberally, especially where the reporting company perceives any ambiguities in the data provided, where procedures or internal sources associated with data preparation have changed, or where required data are available only in part or on an estimated basis.

ROW INSTRUCTIONS

Each row represents a state, district or territory in which the reporting company has access lines. Include only those rows with data to be reported, but complete every item in those rows. Include a row for total company data, even if there is only one state row. See the State Row Numbers and Codes Reference Table for assigned row numbers and codes.

COLUMN DESCRIPTIONS

Each column represents a category of switched or special access lines.

COLUMN

(da) State or Territory - The name of one of the fifty U.S. states or one of the following: District of Columbia, Puerto Rico, Virgin Islands, or Total.

(db) State or Territory Code - The two-letter Postal Abbreviation for the state or territory. Use "TO" for Total Company.

Business Access Lines - Total equivalent analog or digital switched access lines to business customers.

(dc) Analog Single Line Business Access Lines - The single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units." A CPT is a line termination at the customer premises, rather than at the central office. Do not include in this column any equivalent 64kb/sec digital access lines reported in Table II.

(dd) Analog Multi-Line Business Access Lines - Include the total of analog multi-line business CPTs subject to the multi-line business interstate subscriber line charge including multi-line semi-public lines, PBX trunks, Centrex-CU trunks, hotel/motel LD trunks and Centrex-CO lines ordered after July 27, 1983, and Centrex-CO and Centrex-CO like lines in service or ordered as of July 27, 1983. Do not include in this column any equivalent 64kb/sec digital access lines reported in Table II.

(de) Digital Business Access Lines - Include in this column all equivalent 64kb/sec digital business access lines as reported in Table II.

(df) Public Access Lines - The total of Coin (Public and Semi-Public) and public lines excluding customer owned pay telephones (COPT).

Residential Access Lines - Total equivalent analog or digital switched access lines to residential customers.

(dg) Analog Residential Access Lines - Total equivalent 4khz analog switched access lines to residential customers. Do not include in this column any equivalent 64kb/sec digital access lines reported in Table II.

(dh) Digital Residential Access Lines - Include in this column all equivalent 64kb/sec digital residential access lines as reported in Table II.

(di) Mobile Access Lines - Access lines to a common carrier base station using mobile radio.

(dj) Total Switched Access Lines - The sum of columns (dc) through (di). This should equal the amount reported in Table II column (cj).

- Special Access Lines (Non-Switched) - Total special access lines connecting an end user's premises to an interexchange carrier point of presence. Do not include local private lines provided by the local carrier which originate and terminate within the same LATA.

(dk) Analog Special Access Lines (Non-Switched) - The number of 4khz or equivalent analog special access lines.

(dl) Digital Special Access Lines (Non-Switched) - The number of 64kb/sec or equivalent digital special access lines terminated on the customer location. Where DS-3 or DS-1 service is provided without individual 64kb/sec circuit terminations, weight the number of DS-3 terminations by 672 and the number of DS-1 terminations by 24 when calculating the value for this column. In the above calculation, only use those DS-1's and DS-3's for which the customer is billed. Do not double count 64kb/sec circuits associated with DS-1 service where the 64kb/sec circuits are customer derived.

(dm) Total Access Lines (Switched and Special) - The sum of columns (dj) through (dl).

TABLE IV - TELEPHONE CALLS

GENERAL INSTRUCTIONS

Table IV requires the annual reporting of telephone call statistics by state for the calendar year covered by the report. All amounts must be rounded to the nearest thousand.

Toll call counts should be based on originating message volumes and should reflect completed calls. Where completed call data are unavailable, estimates may be reported (e.g., the numbers shown may be based on an actual count taken periodically during the year), but indicate the methodology and source data used in a footnote. Billed access minutes reflect originating and terminating access minutes billed to interexchange carriers, including call set-up time, holding time, and conversation time.

Footnotes should be included in the Footnote Table liberally, especially where the reporting company perceives any ambiguities in the data provided, where procedures or internal sources associated with data preparation have changed, or where required data are available only in part or on an estimated basis.

ROW INSTRUCTIONS

Each row represents a state, district or territory in which the reporting company provides service. Include only those rows with data to be reported, but complete every item in those rows. If data are not available as to the location of all access lines by state, the data may be allocated according to the location of the central office toll center through which the calls originate. Include a row for total company data, even if there is only one state row. See the State Row Numbers and Codes Reference Table for assigned row numbers and codes.

COLUMN DESCRIPTIONS

Each column represents a category of telephone calls or minutes.

COLUMN

(ea) State or Territory - The name of one of the fifty U.S. states or one of the following: District of Columbia, Puerto Rico, Virgin Islands, or Total.

(eb) State or Territory Code - The two-letter Postal Abbreviation for the state or territory. Use "TO" for Total Company.

(ec) Local Calls - The number of calls between points both of which are within the local service area of the calling telephone, or total calls minus total toll calls.

- Toll Calls Completed - The number of completed calls directed to a point outside the local service area of the calling telephone. The number of toll calls reported should be based upon originating message volumes.

(ed) IntraLATA Toll Calls Completed (Originating) - The number of completed toll calls carried by the reporting local operating company within a given Local Access and Transport Area (LATA). Include intraLATA-interstate and intraLATA-intrastate toll calls. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans, where applicable.

InterLATA Toll Calls Completed (Originating) - Completed calls directed to and carried by interexchange carriers.

(ee) InterLATA-interstate Toll Calls Completed (Originating) - The number of completed interstate toll calls directed to and carried by interexchange carriers. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans. Calls should not be double counted at the originating and terminating ends.

(ef) InterLATA-intrastate Toll Calls Completed (Originating) - The number of completed intrastate toll calls directed to and carried by interexchange carriers. Include outward calls, 800 service, directory service, dial-it services (e.g., 900 and 936 services), and optional calling plans. Calls should not be double counted at the originating and terminating ends.

(eg) Total InterLATA Toll Calls Completed (Originating) - The sum of columns (ee) and (ef).

InterLATA Billed Access Minutes (Originating and Terminating) - The number of interLATA access minutes based on bills sent to interexchange carriers. Include total originating and terminating access minutes of use. Where these data are unavailable, a statistically valid calculation may be made based on other data. Such a calculation must be footnoted with a description of the source data and methodology.

(eh) InterLATA-interstate Billed Access Minutes (Originating and Terminating) - The number of interLATA-interstate access minutes based on bills sent to interexchange carriers.

(ei) InterLATA-intrastate Billed Access Minutes (Originating and Terminating) - The number of interLATA-intrastate access minutes based on bills sent to interexchange carriers.

(ej) Total InterLATA Billed Access Minutes (Originating and Terminating) - The sum of columns (eh) and (ei).

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-08, the ARMIS Operating Data Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available", "Withheld" or "Irretrievable".

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "OD".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Unrestricted Version of the initial Operating Data Report file to be submitted by Illinois Bell to cover the calendar year 1991, would be LBIL91OD.U01:

LBIL	COSA for Illinois Bell
91	Data for calendar year 1991
OD	Operating Data Report file
.	decimal point
U	Unrestricted version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Use the assigned row numbers and codes as shown on the State Row Numbers and Codes Reference Table of the accompanying Report Definition.

5. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data field.

6. In any numeric data field designated by N/A, enter -99999. If a "Public Version" diskette is filed, enter -88888 in any numeric data field for which data is "Withheld". Enter -77777 in any numberic data field which the reporting carrier designates as "Irretrievable". All other fields must be populated. The reporting carrier must enter explanatory footnotes for all -77777 designated items. DO NOT override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. If there are no data applicable to an open field, enter zero.

D. Rounding Conventions

1. To convert miles to kilometers, compute total miles, multiply by 1.6093, and then round to the nearest whole number.

2. Internal calculations should retain, where applicable, at least 4 decimal places of accuracy; compute totals and then round to the nearest whole number before applying weighting factors.

3. Final results (in kilometers) must be rounded to the nearest whole number, but report any non-zero entry that is less than 1 kilometer as 1 kilometer.

4. Telephone calls and minutes must be rounded to the nearest thousand.

5. All other amounts must be reported in actual units.

E. Data Record Descriptions

The eleven data record types are described below. See pages 6 through 26 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by two or more Type K1 records, followed by two or more Type S1 records, followed by two or more Type N1 records, followed by two or more Type A1 records, followed by two or more Type P1 records, followed by one or more Type C3 records, followed by zero or more Type F3 records, followed by zero or more Type E4 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 6 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 7 for record layout.
Record Type K1	Outside Plant Statistics-Cable and Wire Facilities Data Record	One Type K1 record for each row with data to be reported. Include one K1 record for total company data, even if there is only one state row as shown on Pages 4 - 6 of the accompanying Report Definition. Each record represents a state, district or territory in which the reporting company has cable and wire facilities. See pages 8 - 10 for record layout.
Record Type S1	Outside Plant Statistics - Other Data Record	One Type S1 record for each row with data to be reported. Include one S1 record for total company data, even if there is only one state row as shown on Pages 7 & 8 of the accompanying Report Definition. Each record represents a state, district or territory in which the reporting company has outside plant facilities. See pages 11 & 12 for record layout.

Record Type N1	Switched Access Lines In Service By Technology Data Record	One Type N1 record for each row with data to be reported. Include one N1 record for total company data, even if there is only one state row as shown on Pages 9 & 10 of the accompanying Report Definition. Each record represents a state, district or territory in which the reporting company has switched access lines. See pages 13 - 15 for record layout.
Record Type A1	Access Lines In Service By Customers Data Record	One Type A1 record for each row with data to be reported. Include one A1 record for total company data, even if there is only one state row as shown on Pages 11 & 12 of the accompanying Report Definition. Each record represents a state, district or territory in which the reporting company has access lines. See pages 16 & 17 for record layout.
Record Type P1	Telephone Calls Data Record	One Type P1 record for each row with data to be reported. Include one P1 record for total company data, even if there is only one state row as shown on Page 13 of the accompanying Report Definition. Each record represents a state, district or territory in which the reporting company provides service. See pages 18 & 19 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is <u>not</u> seeking any confidential treatment. See pages 20 & 21 for record layout.

Record Type F3	Footnote Record	Optional. Zero or more Type F3 records per file. Contains explanatory footnote text. See pages 22 & 23 for record layout.
Record Type E4	Erratum Record	Zero Type E4 records in the first submission of a year's data. One or more Type E4 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 24 & 25 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 26 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number-	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL91OD.U01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1991	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19920315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"U"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5          . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .    Ruler line
Sample record:
1001,"LBIL","H1","LBIL91OD.U01",1991,0,19920315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-08"	18-35	Always contains "FCC REPORT 43-08" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1991 to Dec 1991"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
                                                                                                                    1         1
          1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample record:
1002,"LBIL","L1","FCC REPORT 43-08","Illinois Bell                  ","Illinois            ","Jan 1991 to Dec 1991","XQ"
```

RECORD TYPE K1 - OUTSIDE PLANT STATISTICS CABLE AND WIRE FACILITIES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"K1"	13-16	Always contains the letter K capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	240.0	18-23	Row number as identified on the accompanying Report Definition - Reference Table. Valid range: 110.0 to 910.0. Format: right justified and space filled with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (b) data	"IL"	25-28	This field contains the data corresponding to column (b) as shown on the Form Section of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	5432	30-36	This field contains the data corresponding to column (c) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
7	Column (d) data	5432	38-44	Column (d) data Format: see Field 6 above.
8	Column (e) data	1358	46-52	Column (e) data Format: see Field 6 above.
9	Column (f) data	1358	54-60	Column (f) data Format: see Field 6 above.

RECORD TYPE K1 - OUTSIDE PLANT STATISTICS CABLE AND WIRE FACILITIES DATA RECORD (continued)

Field	Item	Example	Position	Description
10	Column (g) data	2716	62-68	Column (g) data Format: see Field 6 above.
11	Column (h) data	1358	70-76	Column (h) data Format: see Field 6 above.
12	Column (i) data	5432	78-84	Column (i) data Format: see Field 6 above.
13	Column (j) data	5432	86-92	Column (j) data Format: see Field 6 above.
14	Column (k) data	2716	94-100	Column (k) data Format: see Field 6 above.
15	Column (l) data	5432	102-108	Column (l) data Format: see Field 6 above.
16	Column (m) data	1358	110-116	Column (m) data Format: see Field 6 above.
17	Column (n) data	1358	118-124	Column (n) data Format: see Field 6 above.
18	Column (o) data	2716	126-132	Column (o) data Format: see Field 6 above.
19	Column (p) data	20370	134-140	Column (p) data Format: see Field 6 above.
20	Column (q) data	16296	142-148	Column (q) data Format: see Field 6 above.
21	Column (r) data	25432	150-156	Column (r) data Format: see Field 6 above.
22	Column (s) data	32716	158-164	Column (s) data Format: see Field 6 above.
23	Column (t) data	765432	166-175	This field contains the data corresponding to column (t) as shown on the Form section of the accompanying Report Definition. Format: right justified and space filled to 10 positions. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero.

RECORD TYPE K1 - OUTSIDE PLANT STATISTICS CABLE AND WIRE FACILITIES DATA RECORD (continued)

Field	Item	Example	Position	Description
23	(continued)			Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
24	Column (u) data	1358	177-186	Column (u) data Format: see Field 23 above.
25	Column (v) data	1358	188-197	Column (v) data Format: see Field 23 above.
26	Column (w) data	2716	199-208	Column (w) data Format: see Field 23 above.
27	Column (x) data	91358	210-219	Column (x) data Format: see Field 23 above.
28	End of Record Code	"XQ"	221-224	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if any data items are designated as Irretrievable. Add one or more Type F3 records (after the remaining Type K1, S1, M1, A1, P1 and C3 records) containing footnote text to explain the specific circumstances.

```
                                                
```

RECORD TYPE S1 - OUTSIDE PLANT STATISTICS - OTHER DATA RECORD

Field	Item	Example	Position	Description
1	Record Number-	1005	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"S1"	13-16	Always contains the letter S capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	240.0	18-23	Row number as identified on the accompanying Report Definition - Reference Table. Valid range: 110.0 to 910.0. Format: right justified and space filled with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (bb) data	"IL"	25-28	This field contains the data corresponding to column (bb) as shown on the Form Section of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (bc) data	5432	30-39	This field contains the data corresponding to column (bc) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
7	Column (bd) data	35432	41-50	Column (bd) data Format: see Field 6 above.
8	Column (be) data	1358	52-61	Column (be) data Format: see Field 6 above.
9	Column (bf) data	101358	63-72	Column (bf) data Format: see Field 6 above.

RECORD TYPE S1 - OUTSIDE PLANT STATISTICS - OTHER DATA RECORD (continued)

Field	Item	Example	Position	Description
10	Column (bg) data	72816	74-83	Column (bg) data Format: see Field 6 above.
11	Column (bh) data	601358	85-94	Column (bh) data Format: see Field 6 above.
12	Column (bi) data	405432	96-105	Column (bi) data Format: see Field 6 above.
13	Column (bj) data	5432	107-116	Column (bj) data Format: see Field 6 above.
14	Column (bk) data	602716	118-127	Column (bk) data Format: see Field 6 above.
15	Column (bl) data	405432	129-138	Column (bl) data Format: see Field 6 above.
16	Column (bm) data	1358	140-149	Column (bm) data Format: see Field 6 above.
17	End of Record Code	"XQ"	151-154	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if any data items are designated as Irretrievable. Add one or more Type F3 records (after the remaining Type S1, M1, A1, P1 and C3 records) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1005,"LBIL","S1", 240.0,"IL",      5432,     35432,      1358,    101358,     72816,    601358,
1006,"LBIL","S1",-980.0,"TO",      5432,     35432,      1358,    101358,     72816,    601358,
```

```
    1         1         1         1         1         1
    0         1         2         3         4         5
67890123456789012345678901234567890123456789012345678901234
Continuation of sample records:
    405432,     5432,    602716,    405432,     1358,"XQ"
    405432,     5432,    602716,    405432,     1358,"XQ"
```

RECORD TYPE N1 - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number-	1007	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"N1"	13-16	Always contains the letter N capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	240.0	18-23	Row number as identified on the accompanying Report Definition - Reference Table. Valid range: 110.0 to 910.0 Format: right justified and space filled with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (cb) data	"IL"	25-28	This field contains the data corresponding to column (cb) as shown on the Form Section of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (cc) data	5432	30-38	This field contains the data corresponding to column (cc) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
7	Column (cd) data	5432	40-48	Column (cd) data Format: see Field 6 above.
8	Column (ce) data	1358	50-58	Column (ce) data Format: see Field 6 above.
9	Column (cf) data	1358	60-68	Column (cf) data Format: see Field 6 above.

RECORD TYPE N1 - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY DATA RECORD (continued)

Field	Item	Example	Position	Description
10	Column (cg) data	2716	70-78	Column (cg) data Format: see Field 6 above.
11	Column (ch) data	1358	80-88	Column (ch) data Format: see Field 6 above.
12	Column (ci) data	5432	90-98	Column (ci) data Format: see Field 6 above.
13	Column (cj) data	23086	100-108	Column (cj) data Format: see Field 6 above.
14	Column (ck) data	2716	110-118	Column (ck) data Format: see Field 6 above.
15	Column (cl) data	5432	120-128	Column (cl) data Format: see Field 6 above.
16	Column (cm) data	8148	130-138	Column (cm) data Format: see Field 6 above.
17	Column (cn) data	1358	140-148	Column (cn) data Format: see Field 6 above.
18	Column (co) data	1358	150-158	Column (co) data Format: see Field 6 above.

RECORD TYPE N1 - SWITCHED ACCESS LINES IN SERVICE BY TECHNOLOGY DATA RECORD (continued)

Field	Item	Example	Position	Description
19	End of Record Code	"XQ"	160-163	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if any data items are designated Irretrievable. Add one or more Type F3 records (after the remaining Type N1, A1, P1 and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1007,"LBIL","N1", 240.0,"IL",     5432,     5432,     1358,     1358,     2716,     1358,     5432,
1008,"LBIL","N1", 910.0,"TO",     5432,     5432,     1358,     1358,     2716,     1358,     5432,
```

```
 1         1         1         1         1         1         1
 0         1         2         3         4         5         6
90123456789012345678901234567890123456789012345678901234567890123
Continuation of sample records:
     23086,     2716,     5432,     8148,     1358,     1358,"XQ"
     23086,     2716,     5432,     8148,     1358,     1358,"XQ"
```

RECORD TYPE A1 - ACCESS LINES IN SERVICE BY CUSTOMER DATA RECORD

Field	Item	Example	Position	Description
1	Record Number-	1009	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"A1"	13-16	Always contains the letter A capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	240.0	18-23	Row number as identified on the accompanying Report Definition - Reference Table. Valid range: 110.0 to 910.0. Format: right justified and space filled with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (db) data	"IL"	25-28	This field contains the data corresponding to column (db) as shown on the Form Section of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (dc) data	1358	30-38	This field contains the data corresponding to column (dc) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
7	Column (dd) data	5432	40-48	Column (dd) data Format: see Field 6 above.
8	Column (de) data	4074	50-58	Column (de) data Format: see Field 6 above.

RECORD TYPE A1 - ACCESS LINES IN SERVICE BY CUSTOMER DATA RECORD (continued)

Field	Item	Example	Position	Description
9	Column (df) data	1358	60-68	Column (df) data Format: see Field 6 above.
10	Column (dg) data	8148	70-78	Column (dg) data Format: see Field 6 above.
11	Column (dh) data	1358	80-88	Column (dh) data Format: see Field 6 above.
12	Column (di) data	1358	90-98	Column (di) data Format: see Field 6 above.
13	Column (dj) data	23086	100-108	Column (dj) data Format: see Field 6 above.
14	Column (dk) data	2716	110-118	Column (dk) data Format: see Field 6 above.
15	Column (dl) data	5472	120-128	Column (dl) data Format: see Field 6 above.
16	Column (dm) data	31274	130-138	Column (dm) data Format: see Field 6 above.
17	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if any data items are designated as Irretrievable. Add one or more Type F3 records (after the remaining Type A1, P1 and C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1009,"LBIL","A1", 240.0,"IL",     1358,     5432,     4074,     1358,     8148,     1358,     1358,
1010,"LBIL","A1", 910.0,"TO",     1358,     5432,     4074,     1358,     8148,     1358,     1358,

1         1         1         1         1
0         1         2         3         4
01234567890123456789012345678901234567890123
Continuation of sample records:
    23086,     2716,     5472,    31274,"XQ"
    23086,     2716,     5472,    31274,"XQ"
```

RECORD TYPE P1 - TELEPHONE CALLS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number-	1011	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"P1"	13-16	Always contains the letter P capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	240.0	18-23	Row number as identified on the accompanying Report Definition - Reference Table. Valid range: 110.0 to 910.0. Format: right justified and space filled with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (eb) data	"IL"	25-28	This field contains the data corresponding to column (eb) as shown on the Form Section of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (ec) data	5432	30-38	This field contains the data corresponding to column (ec) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested. Enter -77777 in integer rows where data for a field are Irretrievable.
7	Column (ed) data	5432	40-48	Column (ed) data Format: see Field 6 above.
8	Column (ee) data	1358	50-58	Column (ee) data Format: see Field 6 above.

RECORD TYPE P1 - TELEPHONE CALLS DATA RECORD (continued)

Field	Item	Example	Position	Description
9	Column (ef) data	1358	60-68	Column (ef) data Format: see Field 6 above.
10	Column (eg) data	2716	70-78	Column (eg) data Format: see Field 6 above.
11	Column (eh) data	13580	80-88	Column (eh) data Format: see Field 6 above.
12	Column (ei) data	13580	90-98	Column (ei) data Format: see Field 6 above.
13	Column (ej) data	27160	100-108	Column (ej) data Format: see Field 6 above.
14	End of Record Code	"XQ"	110-113	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if any data items are designated as Irretrievable. Add one or more Type F3 records (after the remaining Type P1 and C3 records) containing footnote text to explain the specific circumstances.

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1011,"LBIL","P1", 240.0,"IL",     5432,     5432,     1358,     1358,     2716,    13580,    13580,    27160,"XQ"
1012,"LBIL","P1", 910.0,"TO",     5432,     5432,     1358,     1358,     2716,    13580,    13580,    27160,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1013	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s), or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: right justified and space filled.
5	Table Number	"I.A "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested, then enter " Format: include quotation marks. left justified and space filled.
6	Row Number	240.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for the entire column(s), an entire table, or the entire submission, enter 9999.0. If no confidential treatment is being requested then use 0.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"C "	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Third Column Label	"D "	42-45	.....
9	Fourth Column Label	"E "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1013,"LBIL","C3",1003,"I.A ", 240.0,"C ","R ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1014,"LBIL","C3",1005,"I.B ", 240.0,"ZZ","  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1015,"LBIL","C3",9999,"II  ",9999.0,"CM","  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
1016,"LBIL","C3",9999,"ZZZZ",9999.0,"ZZ","  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",

                                    - OR -

1013,"LBIL","C3",   0,"    ",   0.0,"  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",  ",
```

```
    1         1         1         1         1
9   0         1         2         3         4
78901234567890123456789012345678901234567890
Continuation of sample records:
  ",  ",  ",  ",  ",  ",  ",  ",  ","XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ","XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ","XQ"
  ",  ",  ",  ",  ",  ",  ",  ",  ","XQ"

              - OR -

  ",  ",  ",  ",  ",  ",  ",  ",  ","XQ"
```

RECORD TYPE F3 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1017	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F3"	13-16	Always contains the letter F capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to the entire column(s), an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I.A "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	240.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to the entire column(s), an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"C "	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F3 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-44	The number of this particular footnote. Valid range: 1 to 999. Format: right justified and space filled.
9	Sequence Number	1	46-47	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text " (spaces until pos. 105)	49-105	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	107-110	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1017,"LBIL","F3",1003,"I.A ", 240.0,"C ",  1, 1,"Footnote text for footnote 1                                  ","XQ"
1018,"LBIL","F3",1003,"I.A ", 240.0,"C ",  1, 2,"continuation text for footnote 1                               ","XQ"
1019,"LBIL","F3",1003,"I.A ", 240.0,"C ",  1, 3,"last line of footnote 1                                        ","XQ"
1020,"LBIL","F3",1005,"I.B ", 240.0,"ZZ",  2, 1,"Footnote 2 pertains to all cols. of Table I.B row 240.0","XQ"
1021,"LBIL","F3",9999,"II  ",9999.0,"CN",  3, 1,"Footnote 3 pertains to all rows of Table II column CN  ","XQ"
```

RECORD TYPE E4 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1022	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E4"	13-16	Always contains the letter E capitalized and the number 4 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I.A "	23 28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	240.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"C "	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE E4 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Third Column Label	"D "	42-45	.....
9	Fourth Column Label	"E "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
27	Footnote Number	1	137-139	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	141-144	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1022,"LBIL","E4",1003,"I.A ", 240.0,"C ","D ",*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,
1023,"LBIL","E4",1005,"I.B ", 240.0,"ZZ",*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,
1024,"LBIL","E4",9999,"II  ",9999.0,"CM",*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,
```

```
   1         1         1         1         1
9  0         1         2         3         4
789012345678901234567890123456789012345678901234
Continuation of sample records:
*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,  1,"XQ"
*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,  2,"XQ"
*  *,*  *,*  *,*  *,*  *,*  *,*  *,*  *,  3,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1025	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Sample record:

```
         1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1023,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-08, the ARMIS Operating Data Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available", "Withheld", or "Irretrievable".

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 characters per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4 or (4), NOT - 4.

2. Items that need not be reported because they do not apply are designated by N/A. If a "Public Version" report is filed, enter W/H in any numeric data field for which data is "Withheld". Items that are not being reported because the filing carrier has a waiver or applied for a waiver are designated by I/T. The reporting carrier must enter explanatory footnotes for all I/T designated items. **DO NOT** override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. All other fields must be populated. If there are no data applicable to an open field enter zero.

D. Rounding Conventions

1. To convert miles to kilometers, compute total miles, multiply by 1.6093, and then round to the nearest whole number.

2. Internal calculations should retain, where applicable, at least 4 decimal places of accuracy; compute totals and then round to the nearest whole number before applying weighting factors.

3. Final results (in kilometers) must be rounded to the nearest whole number, but report any non-zero entry that is less than 1 kilometer as 1 kilometer.

4. Telephone calls and minutes must be rounded to the nearest thousand.

5. All other amounts must be reported in actual units.

E. **Page Layouts**

The page layouts for this report are illustrated in the Form section of the accompanying Report Definition. In addition, the following note must appear at the bottom of each page, where applicable:

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE. SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

The paper report will consist of the following pages, in order:

	Illustrated in Report Def. - Form on Page
Table I.A - Outside Plant Statistics - Cable & Wire Facilities	4 - 6
Table I.B - Outside Plant Statistics - Other	7 - 8
Table II - Switched Access Lines In Service By Technology	9 - 10
Table III - Access Lines In Service by Customer	11 - 12
Table IV - Telephone Calls	13

	Illustrated in Paper Report Specs. on Page
The Confidential Treatment Table (at least one page and as many pages as needed)	3
The Footnote Table (at least one page and as many pages as needed)	4
The Erratum Table (for submission number 2 or higher, as many pages as needed)	5
The Certification Page	6

FCC REPORT 43-08
ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
CONF. TREATMENT TABLE
PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	... Ruler Line

sample entries:

I.A	240	C, R	
I.B	240	ALL	
II	ALL	CN	

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

```
FCC REPORT 43-08
ARMIS OPERATING DATA REPORT                                  xxxx-xxxx
                                                             Expires xx/xx/xx

COMPANY:      xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx                 xxxxxxxxxxxx VERSION
STUDY AREA:   xxxxxxxxxxxxxxxxxxxx                           SUBMISSION x
PERIOD:       From mmm yyyy to mmm yyyy                      FOOTNOTE TABLE
COSA:         xxxx                                           PAGE 1 OF x
                                FOOTNOTE TABLE

Table Row   Col FN# Footnote
---- ------ --- -- ------------------------------------------------------
 (a)  (b)   (c) (d)    (e)
xxxx 1234.1 xxx 123 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:
 I.A  240   C     1 Footnote text for footnote 1
                    continuation text for footnote 1
                    last line of footnote 1
 I.B  240   ALL   2 Footnote 2 pertains to all cols. of Table I.B row 240
 II   ALL   CN    3 Footnote 3 pertains to all rows of Table II column CN

                                          -OR-
                    THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.
```

FCC REPORT 43-08
ARMIS OPERATING DATA REPORT

xxxx-xxxx
Expires xx/xx/xx

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	123	... Ruler Line

sample entries:

I.A	240	C, D	1
I.B	240	ALL	2
II	ALL	CN	3

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic					BATR
	1.	the Chesapeake and Potomac telephone companies			CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWWV
	2.	Bell of PA and Diamond State			PDTC
		1. Diamond State Telephone		- Delaware	DSDE
		2. Bell of Pennsylvania		- Pennsylvania	PAPA
	3.	New Jersey Bell			NJNJ
		1. New Jersey Bell		- New Jersey	NJNJ
Bell South					BSTR
		1. Southern Bell			SBTC
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
		2. South Central Bell			SCTC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Company					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except	Kansas	SWAG
U.S. West Communications, Inc.					USTR
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Central Telephone Total					CETC
		1. Central of Florida		- Florida	CEFL
		2. Central of Illinois		- Illinois	CEIL
		3. Central of Virginia		- Virginia	CEVA
		4. Central Telephone Company			CETO
				- North Carolina	CENC
				- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky				CBTC
Commonwealth Telephone Co.				- Pennsylvania	CWTC
Continental Telephone Company					COTC
		1. Contel of Alabama		- Alabama	CO̅AL
		2. Contel of Arkansas		- Arkansas	CO̅AR
		3. Contel of Arizona		- Arizona	COAZ
		4. Contel of California		- California	COCA
		5. Contel of Georgia		- Georgia	COGA
		6. Contel of Idaho		- Idaho	COID
		7. Contel of Illinois		- Illinois	COIL
		8. Contel of Indiana		- Indiana	COIN
		9. Contel of Iowa		- Iowa	COIA
		10. Contel of Kansas		- Kansas	COKS
		11. Contel of Kentucky		- Kentucky	COKY
		12. Contel of Maine		- Maine	COME
		13. Contel of Minnesota		- Minnesota	COMN
		14. Contel of Missouri		- Missouri	COMO
		15. Contel of Nebraska		- Nebraska	CONE
		16. Contel of Nevada		- Nevada	CONV
		17. Contel of North Carolina		- North Carolina	CONC
		18. Contel of North Dakota		- North Dakota	COND
		19. Contel of New Hampshire		- New Hampshire	CONH
		20. Contel of New Mexico		- New Mexico	CONM
		21. Contel of New York		- New York	CONY
		22. Contel of Oklahoma		- Oklahoma	COOK
		23. Contel of Oregon		- Oregon	COOR
		24. Contel of Pennsylvania		- Pennsylvania	COPA
		25. Contel of South Carolina		- South Carolina	COSC
		26. Contel of South Dakota		- South Dakota	COSD
		27. Contel of Texas		- Texas	COTX
		28. Contel of Utah		- Utah	COUT
		29. Contel of Virginia		- Virginia	COVA
		30. Contel of Vermont		- Vermont	COVT
		31. Contel of Washington		- Washington	COWA
		32. Contel of Wisconsin		- Wisconsin	COWI
		33. Contel of West Virginia		- West Virginia	COWV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
GTE Telephone Operating Companies					GTTC
		1. GTE California Inc.		- California	GTCA
		2. GTE Florida Inc.		- Florida	GTFL
		3. GTE Northwest Inc.			GTNW
			- Idaho & Montana		GTNA
				- Idaho	GTID
				- Montana	GTMT
			- OR, WA & Wstn CA		GTNB
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
		4. GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Tennessee	GTTN
				- Virginia	GTVA
				- West Virginia	GTWV
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
			- Iowa & Minnesota		GTIM
				- Iowa	GTIA
				- Minnesota	GTMI
				- Michigan	GTMN
				- Missouri	GTMO
				- Nebraska (also serving Kansas)	GTNE
				- Ohio	GTOH
				- Pennsylvania	GTPA
				- Wisconsin	GTWI
				- General Offices	GTGO
		7. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
		8. GTE Alaska		- Alaska	GTAK
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR

Holding Company – Combined Operating Companies		Operating Company	Combined Study Areas	Study Area	COSA Code
Rochester Telephone Corporation				- New York	RTNY
	1.	Ausable Valley Telephone		- New York	AUNY
	2.	Breezewood Telephone		- Pennsylvania	BTPA
	3.	CC&S Telco		- Michigan	CCMI
				- Ohio	CCOH
	4.	Canton Telephone		- Pennsylvania	CTPA
	5.	Enterprise Telephone		- Pennsylvania	ETPA
	6.	Highland Telephone		- New York	HTNY
	7.	Inland Telephone		- Illinois	ITIL
	8.	Lakeshore Telephone		- Wisconsin	LTWI
	9.	Lakeside Telephone		- Illinois	LTIL
	10.	Lakewood Telephone		- Pennsylvania	LTPA
	11.	Monroeville Telephone		- Alabama	MTAL
	12.	Mt. Pulaski Telephone		- Illinois	MPIL
	13.	Midland Telephone		- Illinois	MTIL
	14.	Midway Telephone		- Michigan	MTMI
	15.	Mondovi Telephone		- Wisconsin	MTWI
	16.	Ontonogan Telephone		- Michigan	OTMI
	17.	Oswayo River Telephone		- Pennsylvania	ORPA
	18.	Prairie Telephone		- Illinois	PTIL
	19.	S & A Telephone		- Kansas	SAKS
	20.	Senca Gorham Telephone		- New York	SGNY
	21.	Sylvan Lake Telephone		- New York	SLNY
	22.	Southland Telephone		- Alabama	STAL
				- Florida	STFL
	23.	Schuyler Telephone		- Idaho	STIA
				- Illinois	STIL
	24.	Thorntown Telephone		- Indiana	TTIN
	25.	Urban Telephone		- Wisconsin	UTWI
Southern New England Telephone				- Connecticut	SNCT
United Telephone System					UTTC
	1.	United Tel. Co. of Florida		- Florida	UTFL
	2.	United Tel. Co. of Indiana		- Indiana	UTIN
	3.	United Tel. Co. of Kansas		- Kansas	UTKS
	4.	United Tel. Co. of Minn.		- Minnesota	UTMN
	5.	United Tel. Co. of Missouri		- Missouri	UTMO
	6.	United Tel. Co. of Neb.		- Nebraska	UTNE
	7.	United Tel. Co. of N. Jer.		- New Jersey	UTNJ
	8.	Carolina Tel. and Tel. Co.		- North Carolina	UTNC
	9.	United Tel. Co. of Ohio		- Ohio	UTOH
	10.	United Tel. Co. of Oregon		- Oregon	UTOR
	11.	United Tel. Co. of Penn.		- Pennsylvania	UTPA
	12.	United Tel. Co. of S. C.		- South Carolina	UTSC

Holding Company – Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
	13. United Tel. Co. of Texas		- Texas	UTTX
	14. United Tel. Co. of Wash.		- Washington	UTWA
	15. United Tel. Co. of Wyoming		- Wyoming	UTWY
	16. United Inter-Mountain Tel. Co.			UTIM
			- Tennessee	UTTN
			- Virginia	UTVA
Total Independent Companies				TICO
AT&T Communications				ATTC
Total Industry				TOTL

APPENDIX F

LIST OF THE CHANGES MADE TO THE ANNUAL REPORT FORM M

GENERAL INSTRUCTIONS:

(e) The following schedules shall be filed in accordance with the provisions and instructions of the Memorandum Opinion and Order revising ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, DA 92-99, released January 31, 1992: Schedule B-1, Balance Sheet Accounts; Schedule B-2, Statement of Cash Flows; Schedule B-3a, Investments in Affiliated Companies; Schedule B-3b, Investments in Affiliated Companies - Cost Method and Nonaffiliated Companies; Schedule B-3c, Analysis of Assets Purchased From or Sold To Affiliates; Schedule B-11, Net Deferred Operating Income Taxes; Schedule B-12, Net Deferred Nonoperating Income Taxes; Schedule I-1, Income Statement Accounts; Schedule I-3, General Services and Licenses; Schedule I-4, Pension Cost; Schedule S-1, Outside Plant Statistics; Schedule S-2, Switched Access Lines in Service by Technology; Schedule S-3, Access Lines in Service by Customer; and Schedule S-4, Telephone Calls. Paper copies of the tables of the ARMIS USOA Report shall be redesignated as follows: Table I as Schedule B-1, Table II as Schedule I-1, Table III as Schedule B-2, Tables IV.A and IV.B as Schedules B-3a and B-3b, Table V as Schedule B-3c, Table VI as Schedule I-3, Table VII as Schedules B-11 and B-12, Table VIII as Schedule I-4 and filed as a part of the Form M. Paper copies of the tables of ARMIS Operating Data Report shall be redesignated as follows: Tables I.A and I.B as Schedule S-1, Table II as Schedule S-2, Table III as Schedule S-3, and Table IV as Schedule S-4 and filed as a part of the Form M. All footnotes filed with the ARMIS USOA Report and ARMIS Operating Data Report shall also be filed as part of the Form M. Any discrepancies between data items filed in either the ARMIS USOA Report or the ARMIS Operating Data Report and the Form M must be noted. In addition, on Schedule I-1, carriers are required to show the total compensation for the year in a footnote. Schedules redesignated as B-1, B-2, B-3a, B-3b, B-3c, B-11, B-12, I-1, I-3 and I-4 and Schedule B-6a are reported in thousands of dollars. All other schedules shall be rounded to the nearest dollar provided that amounts are appropriately adjusted to agree with the totals.

B - BALANCE SHEET ACCOUNTS

SCHEDULE B-2 - Statement of Cash Flows - (See General Instruction (e).)

SCHEDULE B-3a - Investments in Affiliated Companies - (See General Instruction (e).)

SCHEDULE B-3b - Investment in Affiliated Companies - Cost Method and Nonaffiliated Companies - (See General Instruction (e).)

SCHEDULE B-3c - Analysis of Assets Purchased From or Sold To Affiliates - (See General Instruction (e).)

SCHEDULE B-11 - Net Deferred Operating Income Taxes (Accounts 4100 and 4340)- (See General Instruction (e).)

SCHEDULE B-12 - Net Deferred Nonoperating Income Taxes (Accounts 4110 and 4350)

- (See General Instruction (e).)

INCOME STATEMENT SCHEDULES

SCHEDULE I-3 - General Services and Licenses - (See General Instruction (e).)

SCHEDULE I-4 - Pension Cost - (See General Instruction (e).)

STATISTICAL SCHEDULES

Definitions for Schedule S-1 - Outside Plant Statistics - (See General Instruction (e).)

Definitions for Schedule S-2 - Switched Access Lines in Service by Technology- (See General Instruction (e).)

Definitions for Schedule S-3 - Access Lines in Service by Customer - (See General Instruction (e).)

Definitions for Schedule S-4 - Telephone Calls - (See General Instruction (e).)

SCHEDULE S-1 - Outside Plant Statistics - (See General Instruction (e).)

SCHEDULE S-2 - Switched Access Lines in Service By Technology - (See General Instruction (e).)

SCHEDULE S-3 - Access Lines in Service By Customer - (See General Instruction (e).)

SCHEDULE S-4 - Telephone Calls - (See General Instruction (e).)

Checklist for Schedules S-1 through S-4 - (See General Instruction (e).)

*U.S. Government Printing Office: 1992 — 312-024/60011